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ABSTRACT

The purpose of this hearing is for the House Subcommittee on Employment Opportunities to gather evidence on H.R. 5055 and H.R. 6075, amending the Civil Rights Act of 1964 so as to prohibit sex discrimination on the basis of pregnancy. Although some observers stated their feeling that this was the original intent of the legislation anyway, a recent Supreme Court decision ("General Electric vs. Gilbert IUE") stated the contrary. Thus the need was felt for additional legislation to be considered. Presented here is the second day's testimony, consisting of statements, summaries, letters and other supplemental materials from a variety of expert witnesses and interested persons on the subjects of sex discrimination, equal pay, disability benefits, employer responsibility and related concerns. (BP)

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ED 172128

LEGISLATION TO PROHIBIT SEX DISCRIMINATION ON THE BASIS OF PREGNANCY

Part 2

HEARING

BEFORE THE

SUBCOMMITTEE ON EMPLOYMENT OPPORTUNITIES

OF THE

COMMITTEE ON EDUCATION AND LABOR

HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

FIRST SESSION

ON

H.R. 5055 and H.R. 6075

TO AMEND TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 TO PROHIBIT SEX DISCRIMINATION ON THE BASIS OF PREGNANCY

HEARING HELD IN WASHINGTON, D.C., JUNE 29, 1977

Printed for the use of the Committee on Education and Labor
CARL D. PERKINS, *Chairman*

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U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
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LEGISLATION TO PROHIBIT SEX DISCRIMINATION ON THE BASIS OF PREGNANCY

Part 2

WEDNESDAY, JUNE 29, 1977

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON EMPLOYMENT OPPORTUNITIES
OF THE COMMITTEE ON EDUCATION AND LABOR,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:40 a.m., in room 2257, Rayburn House Office Building, Hon. Augustus F. Hawkins (chairman of the subcommittee) presiding.

Members present: Representatives Hawkins, Le Fante, Weiss, Corrada, Sarasin, and Pursell.

Staff present: Susan Grayson, staff director; Carole Schanzer, clerk and administrative assistant; Richard Mosse, assistant minority counsel.

Mr. HAWKINS. The Subcommittee on Employment Opportunities is called to order.

This morning's hearing is a continuation of the subcommittee's consideration of H.R. 5055 and H.R. 6075, legislation to amend title VII of the Civil Rights Act of 1964 to prohibit sex discrimination on the basis of pregnancy.

The hearing today will conclude the subcommittee's deliberations on this issue. It is my intent to move a bill out of the committee at the earliest possible opportunity during the month of July and to move it to the floor as expeditiously as possible.

[Text of H.R. 5055 and H.R. 6075 follow:]

[H.R. 5055, 95th Cong., 1st Sess.]

A BILL, To amend title VII of the Civil Rights Act of 1964 to prohibit sex descrimination on basis of pregnancy

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title VII of the Civil Rights Act of 1964 is amended as follows:

Section 701 is amended by adding thereto a new subsection (k) as follows:

"(k) The terms 'because of sex' or 'on the basis of sex' include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions, and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 703(h) of this title shall be interpreted to permit otherwise."

[H.R. 6075, 95th Cong., 1st Sess.]

A BILL, To amend title VII of the Civil Rights Act of 1964 to prohibit sex discrimination on the basis of pregnancy

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title VII of the Civil Rights Act of 1964 is amended as follows:

SECTION 1. Section 701 is amended by adding thereto a new subsection (k) as follows:

"(k) The terms 'because of sex' or 'on the basis of sex' include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions, and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 703(h) of this title shall be interpreted to permit otherwise.".

SEC. 2. The amendment made by this Act shall be effective upon the date of enactment: *Provided*, That an employer who, either directly or through contributions to a fringe benefit fund or insurance program, is providing benefits under a fringe benefit program which is in violation of section 2000e of title 42, United States Code, and the following, as amended by this Act shall not, either directly or by failing to contribute adequately to the fringe benefit fund or insurance program, reduce the benefits or the compensation provided to any employee in order to comply with the provisions of section 2000e of title 42, United States Code, and the following, as amended by this Act.

Mr. HAWKINS. We are certainly pleased to have with us this morning as our opening witness Murray Latimer, Consulting Actuary, whose testimony will focus on the cost of providing pregnancy disability benefits under existing plans. Mr. Latimer, your prepared statement will be entered in the record in its entirety at this point, and you may proceed as you so desire.

[The prepared statement of Murray Latimer follows.]

Statement of
Murray W. Latimer
On H.R. 6075

My name is Murray W. Latimer. I am a consulting actuary with an office here in Washington. I appear here in support of H.R. 6075, a Bill to prohibit sex discrimination on the basis of pregnancy insofar as such discrimination relates to the payment of benefits under employer plans which purport to reimburse employees for loss of wages and out-of-pocket expenses resulting from disability.

I shall testify principally as to the cost of the additional benefits which the Bill would require be part of private health care plans, which, in my opinion, is relatively small. But this testimony I believe to be irrelevant. The Bill basically Prescribes ~~proscribes~~ sex discrimination against a form of disability peculiar to women - that accompanying childbirth. Like many other forms of disability, its rate of occurrence has been substantially reduced during the past 25 years. But unlike any other type of bodily impairment, no one wishes to see the rate decline much, if any, further. And there is some basis for thinking that the fertility rate at the level of 1976 may have been too low. Thus, not only does the exclusion of maternity benefits from health benefit plans constitute a discrimination against women, it has anti-social aspects which ought not to be ignored.

It may be worth mentioning that many employed women are covered by maternity benefits in the form of provision for medical, surgical, hospital and

related services by virtue of the insurance which their husbands have through their employers. I have not seen a percentage reported recently, but I think it safe to say that more than half of the health insurance plans maintained by employers for their employees cover dependents insofar as hospital and related costs are concerned. Many of these include maternity benefits. I know of a number of companies with employment totalling well over half a million which provide the same benefits for hospitalization, medical, surgical and related costs for dependents as for employees and include the cost of maternity on the same terms - substantially 100 percent of the cost - as for other disabilities. But while these health care maternity benefits are provided for dependents of employees, they are excluded from the benefits provided for female employees.

In the plans to which I refer, the employer pays for all premiums and wives are covered, whether or not employed. The standard provision for prevention of duplication of benefits is included in these plans. If the wife is employed and is not covered for maternity benefits in a plan of her employer, or is inadequately covered, she would be entitled to an aggregate benefit which would leave her with little or no out-of-pocket expense.

I have made calculations as to the aggregate cost of including maternity benefits in health care plans which I have summarized in a memorandum attached to this statement. I shall not read this memorandum which I hope can be included in the record. My estimates cover two types of plans: those which pay incomes during periods of temporary disability and those which reimburse - in

whole or in part - for the costs of hospitalization. There are plans covering other expenses - those for physicians, nurses, laboratories, and other practitioners and services - for which the data available to me are insufficient for the purposes of making estimates pertinent to H.R. 6075.

I conclude that, in the aggregate, the addition to cost would be of the order of 3.75 percent, net, for disability income plans and 3.50 percent - less present costs which I did not estimate - for hospitalization plans. I have not been able to think of any reason why costs for other types of benefits would be increased by any larger percentage.

The percentage of women employees of the total now varies substantially between industries. And, no doubt, the variation is somewhat wider among different employers. An all female employee group - probably quite rare - would have above average additional costs if the age distribution of the group were the same as for all women in the labor force. My estimates result in a fertility rate for the entire labor force in which women constitute about 40.5 percent. Thus, even in an all-female labor force, the increase in cost resulting from payment of pregnancy benefits would be of the order of 10 to 12 percent.

Cost of Maternity Care under Health Insurance Plans Maintained by Employers

A large fraction of the employees in the United States has some protection against loss of income resulting from cessation of wage payments during periods of disability and against hospital, medical and related costs resulting from such disability. A recent survey showed that, at the end of 1974, the numbers of wage and salaried workers covered by various forms of health insurance providing, with the administrative or financial aid (or aid of both types) of employers, protection against wage loss and expenses of health care during periods of temporary disability to be those in the following tabulation. The percentages of covered employees to the total and total contributions are also given. 1/

Item	Number	Percentage of all wage and salaried workers	Total contributions (Thousands)
Hospitalization	57,600,000	69.9	$11,437,200
Surgical expense)	56,100,000	68.1	(
)			(7,022,400
Regular medical)	54,900,000	66.5	(
Major medical	28,200,000	34.3	4,608,500
Wage loss	31,100,000	45.9	4,205,100

It is stated that "Sick-pay benefits were given in the case of normal pregnancy by approximately 25 percent of the plans." 2/ Plans providing reimbursement for wage loss do so partly by means of sick leave, others through insurance. Whether the 25 percent relates to both types is not clear. To what extent reimbursement for hospital, medical and related expenses related to maternity are covered is not indicated, but it is certain that the proportion of all such expenses of employee participants in the plans which are reimbursed is much less than for disabilities not related to maternity. This is partly because when any reimbursement is made for wages lost by and expenses of employees incurred because of maternity it does not represent the same proportion of wage and salary loss and of expenses incurred as would be true of disabilities resulting from causes unrelated to childbirth and partly because, in most plans, none of the expenses related to pregnancy and childbirth are covered.

This memorandum is addressed to the question of what costs, in addition to those now being incurred, would be involved if all insurance plans of employers were to provide that wage losses and other costs related to disability attendant upon childbirth were to be reimbursed to the same extent as wage losses and expenses incurred in connection with any other disability. It is assumed that the standard for judging whether or not a pregnant employee or an employee who has recently given birth to a child is able to work are standards comparable to those which would apply to any other disability.

The basic statistic needed is, of course, the number of births among females who have been insured for one of the types of plans which provide some form of disability benefit or for the reimbursement of expenses incurred because of the disability (or for the required services instead of reimbursement). The Society of Actuaries has, for a number of years, published statistics relating to the frequency of benefit payments under plans which provide benefits both for temporary disability unrelated to pregnancies and a similar payment providing benefits in event of pregnancy. In the latter case, the data relate to plans providing for a 6-week benefit, irrespective of the actual duration of the disability, some of which probably had a duration of less than 6 weeks.

The most recent compilation of the Society 3/ indicated that among 2677 "experience units" (separate employers for the most part) having less than 1000 employees there was, in the three years 1972-74, assuming 6 weeks per case, an average rate of 5.05 maternity cases per 1,000 employees, male and female. Data relating to the percentages of female employees to the total in plans providing maternity benefits were last published for the years 1968-70. 4/ The data on the proportions of female participants were published in groups which were quite broad: less than 11% female, 11 to 41%; 41 to 71% and 71% and over. Assuming the average percentages of female participants for each group to be 3, 22, 50 and 80, the proportions of women in the plans providing maternity benefits was 19.47 percent as compared with (using the same assumptions) 25.03 percent for plans providing no such benefits. That is, proportions of women among the group of plans providing maternity benefits was 77.79 percent of the proportion of women in plans which did not provide such benefits. Of the exposure under the plans reported, the percentage in those plans providing maternity benefits was 45.91. Then the average proportion, which women constituted of the exposure under all reporting plans in 1968-70, was 22.48. There is a more detailed classification of the percentages of female employees covered by plans providing for temporary disability benefits (but not maternity) available for 1972-1974. The proportion of female employees is reported by 10 percent intervals (under 11 percent, 11 percent to 21 percent, and so on). Assuming that the average proportion of female employees is 2 percentage points above the minimum of the range, the overall percentage of female participants would average 22.74

percent of the total. (The assumptions used to calculate the average for 1968-1970, if applied to 1972-74 data, would produce an average of 22.87 percent of female participants.) This was a reduction of 8.6 percent from 1968-70.

The proportion of reporting plans which provided maternity benefits in 1972-1974 (as measured by the exposure) dropped to 36.75 percent from 45.91 four years earlier. This probably indicates that the samples are not equally representative. If the proportion of women in plans which provided maternity benefits was also lower by 8.6 percent than in 1968-70, the average percentage of women in such plans in 1972-74 would be 21.00. If the 1968-70 proportion of plans providing maternity benefits had continued to apply, the percentage, in 1972-74, of those employees covered by all plans providing temporary disability benefits who were women would have been 20.53.

For a population composed entirely of women having the same marital and age composition as this group, with the proportions giving birth to a child the same for plans without maternity benefits as those plans providing them, the number of such women, per 1000 women, giving birth to a child in a period of one year, would be 5.05 or 24.60.
(.2053)

There is a larger proportion of women of child bearing age in the labor force than in the population as a whole. The labor force data as published include no persons under 16 years of age. For the purposes of the following tabulation, it is assumed that there were, in July, 1974, 2,044,000 women aged 15 in the population and that 30 percent of them were in the labor force. Given these assumptions, women over 65 constituted 2.66 percent of the female labor force. The total population data exclude women under 15, and assume that those at ages 15-64 constitute 97.34 percent of the total. Comparative data for July, 1974, are shown in the following tabulation:

Age Group	Total Female Population 1974 (a)	Civilian Female Labor Force (July 1, 1974) (b)	Women not in Labor Force (c)
16-19	14.54%	14.85%	14.20%
20-24	13.09	16.24	9.64
25-29	(	11.57	(
30-34	(21.22	8.66	(22.30
35-39	(	8.41	(
40-44	(16.50	8.49	(16.06
45-49	(	9.08	(
50-54	(17.42	8.88	(16.83
55-64	14.57	11.16	18.31
65 & over	2.66	2.66	2.66
Total	100.00%	100.00%	100.00%
Total 16-44	65.35	68.22	62.20
Median age	36.6	34.7	37.2
Total number (000's)	70,691	37,012	33,679

(a) Based on 1975 Statistical Abstract of the U.S., page 7 - assumes number at age 20 to be 1,950,000, and at 15, 2,044,000.
(b) Based on data in U. S. Department of Labor - Bureau of Labor Statistics "Employment and Earnings", August, 1974, page 20 - assumes a participation rate at age 15 of 30 percent.
(c) Assuming total population data applicable to July 1.

If the fertility rates as calculated by the U. S. National Center for Health Statistics for specified groups were applicable to the women in the labor force, the fertility rate for July, 1974, for that group would have been 70.2 as compared with the applicable 68.4.[5] The percentage of the total female labor force corresponding to the 70.2 fertility rate is 4.75. That is, 4.75 percent of all women in the labor force would give birth to a child in a one-year period at the fertility level of 1974. Thus, the percentage indicated by the insured maternity benefit data, 2.46, is 51.79 percent of the percentage derived on the assumption that the female population fertility rate applies to women in the labor force. With the 68.4 fertility rate as the base, the number of children born in a year to women in the labor force having a child in a period of a year would be 4.67 percent of the number of such women, indicating that labor force fertility is 52.68 percent of that of the total population.

The general population fertility rate, by age groups, applied to women in the civilian labor force with the July, 1974 age distribution, would indicate annual births among that group of 1,773,000. If the actual rates are such as to produce 52.68 percent of this number, the total would have been 934,000. The average number of women 16 years of age and over for the year 1974 was 98.42 percent of the number in July.[6] Assuming this percentage applies at age 15 (and it is probably too high for that age), the births at the July rate are to be lowered to 919,000 as the appropriate number for the year. There were 3,160,000[7] births in the United States in 1974, so that, if there were 919,000 born to women in the civilian labor force, there must have been 2,241,000 born to other women. This implies a fertility rate among the other women of 107.0, slightly above the total fertility rate of all women in 1964.[8]

No doubt the fertility rate among employed women has always been lower than the rate for women not in the labor force. There is some indication that this differential has been increasing. In the years 1972-1974, the amount of maternity benefits payable under insured temporary disability plans was only 38 percent of the expected for plans having a maximum duration of benefits (for a disability other than one arising out of maternity) of 13 weeks and 40 percent for plans having a maximum duration of 26 weeks. Some of this decline may be attributable to changes in industry or age distributions (though the latter would tend to increase the percentages), or to a smaller percentage of women covered (though, if expected benefits are not to lose significance) a reduction in the proportion of insured women should be reflected in the expectation. However that may be, the average fertility rate for the population averaged 109.2 in the years 1947-1949[2] to 70.3 in 1972-74[5], a reduction of only 36 percent, as compared with over 60 percent in the actual/expected ratio experienced by insured temporary disability income plans.

In 1975 and 1976, the fertility rate tended downwards, the preliminary rate for 1976 being 65.7. [10/] However, there appears to have been an upword movement since August, 1976 [11/], and I leave unchanged the estimate of 919,000 as the number of births to be expected in a year from women in the civilian force at the number and age composition as of July, 1974.

The average female civilian labor force in 1976 was 7.23 percent above 1974, and the first two months of 1977 exceeded the corresponding period in 1976 by 3.91 percent. [12/]. I estimate the level for 1978 to be 16 percent above that for 1974, and the number of births to women in the labor force for 1978 to be 1,066,000.

Women are, of course, now employed in almost every industry. But there are some industries in which they constitute a very large part of the labor force. The exposure, measured by dollars per week, of the weekly indemnity which would have become payable to all insured persons in these industries and trades if they were to become disabled (combined for the years 1970-1974) and the average weekly wages of employees in those same industries and trades, is shown in the following tabulation:

	Weekly Indemnity Exposed (a)	Average Weekly Wages February, 1977 (b)
Food and kindred manufacturing	$10,309	$206.19
Textile manufacturing	5,941	153.98
Apparel manufacturing	2,350	124.25
Electrical machinery, equipment and supplies manufacturing	22,429	207.85
Wholesale trade	10,774	138.18
Retail trade - general merchandise	9,993	108.70
Food stores	1,854	146.24
Apparel and accessory stores	1,623	97.53
Other retail	1,283	146.16
Finance, insurance and real estate	3,358	165.88
Services	13,733	153.97
Total and average	$83,647	$165.70

(a) Same as footnote 3/.
(b) See periodical referred to in footnote 5/, pages 94-102.

The wages are the averages for all employees, male and female, in these industries and trades. While most data are not reported separately by sex, it is the usual rule that the average compensation of women is substantially lower than for men. In the federal civil service, there is a high concentration of women in lower grades and in almost complete absence of representation at the top. 13/ Assuming that the average salary in each of three broad groups stands at the middle of the group (which means that in the classifications within these groups there is no similar concentration of women at the lower end), the average salary of women in the federal civil service would, in 1974, be 75.8 percent that of men. If this percentage applies to private industry (few, if any, of which has an organization such as the Civil Service Commission to enforce classification standards and uniformity in the classification of jobs), the average weekly wage for women in the industries in the list, for February, 1977, would be $125.60.

There is an appreciable group of women covered by disability income plans in higher wage industries, so that the $125.60 is probably an understatement. Supposing that the industries in the preceding table account for two-thirds of the women covered by temporary disability insurance, and that the remainder are mostly in other manufacturing industries (the large group of women in the communications industry is covered by uninsured temporary disability income plans) where the average weekly wage, in February, 1977, using the weekly disability income exposure for the years 1970-74 as weights, was $194.90, then the overall average wage for the industries in which women are covered for insured disability income benefits would be $175.43. Assuming the average weekly wage for women in these industries to be 75.8 percent that of men and women combined, the average for women in February, 1977 was $132.98.

Unpublished reports filed by basic steel companies with the United Steelworkers of America indicate the average weekly sick and accident benefit in 1975 to have been 42.4 percent of the average weekly wage in the basic steel industry in that year as compiled by the Bureau of Labor Statistics. Under the Steelworkers insurance agreements with the industry, benefits are fixed in terms of dollars, and in 1976, the average weekly sick and accident benefit was 39.8 percent of the average wage. Steel benefits are fixed in relation to standard wage rates which do not include incentives, and average between 50 and 60 percent of the wages calculated without regard to incentives, the higher percentage being applicable when the benefit rate is changed, the lower percentage just before a change occurs. I estimate the overall weekly benefit to be 55 percent of the average weekly wages of beneficiaries.

Because most insured temporary disability benefit plans which provide maternity benefits pay for a specified number of weeks, irrespective of the duration of the actual disability period, insurance company records do not reflect those actual periods. The records of the Hawaii compulsory sick benefit plans cover a short period and Hawaii can hardly be considered a representative state. I have used 8 weeks as appropriate for an estimate of the duration of maternity benefits. 14/

I have estimated the maternity benefits which would be paid in 1978 under plans for temporary disability benefits by combining the above facts and estimates and making certain further assumptions:

Percentage of the labor force covered by temporary disability benefit plans in 1974: 34.17, 31,100,000 covered, 91,011,000 in the civilian labor force. 15/

Assuming that the coverage of women under the plans has increased since 1974 in the same ratio as has the number of women in the labor force - 16 percent, the number of births by women covered in the plans: [.3417 (1,066,000)] - 364,000.

Assumed average weekly wage in 1978: 10 percent above level for early 1977 - $146.28.

Average benefit for period of disability:

Weekly - .55($146.28) - $80.45

Total - 8($80.45) - $643.60

Aggregate annual benefits:

($643.60) 364,000 - $234,000,000

Benefits presently being paid would be much smaller for two reasons: only 20.53 percent of the presently covered female participants are eligible for maternity benefits and the duration of benefits is six rather than eight weeks. Present benefits are thus $36,000,000.

The increase over the maternity benefits presently being paid would be $198,000,000.

Benefits under temporary disability plans in 1974 totalled $3,527,400.16/ It was assumed that the number of covered women increased between 1974 and 1978 by the same percentage as the increase in the labor force - 16 percent. An increase of 10 percent in average wages between early 1977 and the average for 1978 was assumed. This was equivalent to assuming an increase of 29 percent between the years 1974 and 1978. Given these assumptions, presumably the benefits for 1978, for plans having the 1974 provisions, would be $5,278,400,000. The $198,000,000 would add 3.75 percent to the total.

Reports to the United Steelworkers of America from basic steel companies with plans providing hospital benefits for union members and their dependents indicated an average cost of providing the hospital service specified in the plan in maternity cases was $717 in 1976, and inpatient days per confinement averaged 4.0.

The benefits under the insurance agreements between the Steelworkers and basic steel companies are superior to those in most hospitalization plans for two principal reasons: benefits under plans covering steelworkers cover a substantially larger fraction of the total costs than do most such plans, and steelworkers are concentrated in urban areas where hospital costs are significantly above average. An overall estimate for present purposes can best be made at a later stage.

The increase in the costs of maternity benefits under steel company hospitalization plans in the period 1972-76 was 64 percent, and in the two years 1972-74, 37 percent. In the same period, the average medicare bill for hospital inpatients increased 59 percent. 17/ There is no reason to expect any major differences in the rates of cost escalation as between different types of hospital care not involving use of equipment, such as kidney dialysis machines, embodying major new technological developments.

There has been some acceleration in the rate of increase in hospital costs in the last year or two, as compared with the preceding couple of years. I assume that the increase in the hospitalization benefits disbursed under employee hospitalization benefit plans between 1974 and 1978 will be 55 percent. And I estimate that the benefits under hospitalization benefit plans covering steelworkers have provided benefits sufficiently higher than average that the level of maternity benefits generally in 1978 will be 25 percent above 1976 steel maternity benefits.

On the basis of the foregoing assumptions, these figures result:

Proportion of civilian labor force covered by hospitalization benefits in 1974: 63.13 percent 18/

Number of covered births: (.6313 (1,066,000))- 673,000

Benefit per case: 1.25 ($717) - $696

Total maternity benefits in 1978 - $603,000,000

Total employee hospitalization benefits in 1974 were $11,059,000,000 19/ From 1972 to 1976, medicare costs per inpatient hospital case increased 59 percent and steelworker hospitalization costs per case rose 64 percent. For total hospitalization benefits, I estimate a 55 percent rise from 1974 to 1978. This is at the same annual rate as in the two years 1972-74. This would make total employee hospitalization benefits for maternity 3.5 percent of total hospital benefits for the 1974 coverage which covers maternity cases to an extent which I have not been able to ascertain. Thus the offset against the 3.5 percent cannot be estimated.

I have not had access to the data which would be needed to estimate cost of the services of physicians in maternity cases under employee medical care plans.

Footnotes

1/ Social Security Bulletin, September, 1976, pp. 5-8, coverage for wage losses related to private industry only.

2/ Idem, p. 17.

3/ Society of Actuaries, 1975 Reports of Mortality and Morbidity Experience, pp. 241-251.

4/ Society of Actuaries, 1971 Reports of Mortality and Morbidity Experience, pp. 190-202.

5/ See, for example, Statistical Abstract of the United States, 1976, p. 54.

6/ For the average number in 1974, see U. S. Department of Labor, Bureau of Labor Statistics "Employment and Earnings", April, 1977, p. 20.

7/ See reference in footnote 5/, p. 53.

8/ Statistical Abstract of the United States for 1970, p. 48.

9/ Historical Statistics of the U. S. - Colonial Times to 1957, p. 23.

10/ Public Health Service, Health Resources Administration, "Monthly Vital Statistics Report", April 1, 1977, p. 8. 65.7 is mean of 12 monthly figures.

11/ Idem, May 1, 1977, p. 8.

12/ See periodical referred to in footnote 5/, Department of Labor, Bureau of Labor Statistics, "Employment and Earnings", February, 1976, p. 40; March, 1976, p. 26; February, 1977, p. 24; March, 1977; p. 31.

13/ See reference in footnote 5/, p. 25.

14/ See Brief of the American Telephone Telegraph Company as Americus Curiae, General Electric v. Gilbert (and Gilbert v. General Electric) case in the Supreme Court of the U. S., October Term, 1975 (Nos. 74-1589 and 1590, pp. 6a and 6b).

15/ Reference cited in foctnote 6/, p. 19.

16/ Reference cited in footnote 1/, p. 10.

17/ Social Security Bulletin, May, 1977, p. 50 and U. S. Department of Health, Education and Welfare, Social Security Administration, Monthly Benefit Statistics, May 24, 1977, Table 10.

18/ 57,600,000 covered (Social Security Bulletin, September, 1976, p. 5); 91,011,000 in civilian labor force (Department of Labor, Bureau of Labor Statistics, "Employment and Earnings", April, 1977, p. 19.

19/ Social Security Bulletin, September, 1976, p. 10.

STATEMENT OF MURRAY W. LATIMER, CONSULTING ACTUARY, WASHINGTON, D.C.

Mr. LATIMER. Thank you, Mr. Chairman.

I would like to make a brief statement, and since the bulk of what I have to say is entered into the record, I will merely summarize it.

My statement is wholly concerned with the cost of the addition to the existing health insurance benefit plans now maintained by industry resulting from the addition to those plans insofar as that may be necessary of provisions which would require the payment to women who become disabled by reason of pregnancy on the same basis that those benefits are payable to employees who may become disabled for any other reason.

This testimony on cost is, I think, largely irrelevant to the matter of principle, and this is intended to eliminate discrimination, and discrimination is per se undesirable. Even if the cost were much larger than I think it is, I should be in favor of elimination in any case, but it has other aspects. This is a kind of disability on which the future of the population depends, and I think there are reasons to think that the fertility rate has already declined to a point which is perhaps undesirable, and any discouragement, artificial discouragement particularly, to the normal exercise of the powers of procreation is by itself undesirable.

There is a good deal of discrimination in other aspects, but I think it worthwhile mentioning that it is rather peculiar that employers provide to the wives of employees benefits which, under these plans, they do not provide to the employees themselves.

For example, I am involved with a plan covering some half million employees in which the hospitalization and medical insurance benefits are provided to the wives of employees, but they are provided to employees themselves only in case the date of birth can be fixed with sufficient precision to enable a woman to keep in her job a disability state permitting until at least the first of the month in which the birth occurs.

If that happens, she gets these benefits. If it does not happen, she does not get them, and as a result, the majority of the many thousands of women employed by these companies do not get maternity benefits. They do get, I might add, a 6-week disability income type of benefit or benefits, but not the substantial cost of hospitalization and medical care during pregnancy.

I made some calculations as to the aggregate cost of maternity benefits for the employees covered by these plans, on the assumption, which fits no one company probably precisely, that the employment mix of the employees of that company has the same proportion of females as occurs in the civilian labor force, and that the age distribution of these women is the same as it is for women in the civilian labor force.

In the year 1974—which I chose because that is the year in which the latest compilation of the Society of Actuaries on the cost of the wage continuation plans is available—in that year, the percentage of the female civilian labor force which was in the childbearing age was a little over 68 percent.

I have attempted to project these figures through 1978 as being more appropriate in connection with the consideration of legislation in this session of Congress, and there may be some error there. I would think it would be rather slight. My conclusion is that on the basis of these assumptions, assuming also that the 1974 fertility rates apply to 1978, and there has been a decline since 1974 in general fertility rates, the general cost to the wage continuation plans would be on the order of 3.5 percent.

For the hospitalization plans, the additional cost would be 3.5 percent. I estimate also that for a labor force which is composed entirely of females with the age distribution the same as the civilian labor force was in 1974, that the additional cost would be on the order of 10 to 12 percent.

All of this is detailed in the statement which has been placed in the record, Mr. Chairman, and I think with that summary, that is sufficient to indicate the magnitude of the cost.

Mr. HAWKINS. Thank you, Mr. Latimer.

In concluding your statement, on page 3, you say,

> Thus, even in an all-female labor force, increasing cost resulting from payment for pregnancy benefits would be on the order of 10 to 12 percent.

To what does the 10 to 12 percent refer?

Mr. LATIMER. Of the present cost. Well, of whatever the cost would be in the absence of the benefits that would be imposed by——

Mr. HAWKINS. The cost of the complete health plan for the employees?

Mr. LATIMER. Whatever parts of a complete health plan might be in force in a particular employer; yes.

Mr. HAWKINS. So the increase in cost would range between 10 to 12 percent?

Mr. LATIMER. That is for 100 percent female labor force; yes.

Mr. HAWKINS. May I also ask you whether or not you have included in the calculations you used the present State law requirements regarding disability benefits for pregnant workers?

Mr. LATIMER. Only insofar as they may be reflected in benefits under the present plans as compiled by the Social Security Administration.

Mr. HAWKINS. On what particular period of time have you estimated the disability?

Mr. LATIMER. Eight weeks, as far as the average period. Of course, the periods vary, but I took 8 weeks as an average; yes, sir.

Mr. HAWKINS. What is the basis for using that particular period of time?

Mr. LATIMER. That was a period of time which was used by the brief in the General Electric case filed by the American Telephone & Telegraph Co., Bell Telephone.

Mr. HAWKINS. Do you think that was a reasonable period of time to use as a basis?

Mr. LATIMER. I think it might be slightly on the long side, but it seems to me a reasonable basis. The telephone companies are the largest employers of women in the United States, by far.

Mr. HAWKINS. There was some testimony before this committee that indicated 20 weeks was the normal period of time for pregnancy leave.

I am not so sure who made that observation. Would you think that to be unusually long?

Mr. LATIMER. Yes, much too long, as an average.

Mr. HAWKINS. Is there any experience or study of any kind to justify using that length of time?

Mr. LATIMER. Not known to me, no, sir. I didn't take an average, but there were some figures filed on behalf of Xerox, as I recall, some company in that GE case in which it was said that there had been long periods, but this was, as I understood it, encouragement on the part of the company because the women were engaged in much travel in their jobs, and they felt that the longer period was appropriate, but the impression that I got from it was only an impression, but it was that it was regarded as unnecessarily long, but dealing with the personnel policy of the company.

Mr. HAWKINS. Thank you, Mr. Latimer.

Mr. Sarasin?

Mr. SARASIN. Thank you, Mr. Chairman.

Mr. Latimer, thank you for your testimony. We did have testimony before this committee that somewhere between 40 and 60 percent of the women in the work force become pregnant and have their child and then do not return to the work force. Do you have any figures with regard to those who do not return after childbearing?

Mr. LATIMER. It depends on the length of the period you are talking about. If you are talking about a period of 2 to 3 years after childbirth, yes. I think those figures would be probably——

Mr. SARASIN. So 40 to 60 percent of those who do not come back within a short period of time at least to the work force would probably be accurate?

Mr. LATIMER. Well, I am not sure it is accurate. I say, it is within what I would think might be reasonable.

Mr. SARASIN. Now, the 2- or 3-year period you mentioned is a gap for some women who might not come back? Obviously, you wouldn't consider that period as a period of disability.

Mr. LATIMER. Oh, no.

Mr. SARASIN. You use a figure of 8 weeks as the average period of disability. Now, about one-half the plans that are in existence apply for a 26-week period of disability, and a good number apply for 52 weeks. Would you feel that that 26-week period would be unreasonable, barring some complication?

Mr. LATIMER. Would I expect the average period of disability from pregnancy would be 26 weeks?

Mr. SARASIN. Yes.

Mr. LATIMER. Oh, no.

Mr. SARASIN. There are some plans, of course, that do provide for pregnancy benefits, a wage replacement during that varying period of pregnancy, or varying period of childbirth, usually limited to 6 or 8 weeks, while the rest of the plan or the rest of the benefits for men and women might go well beyond that, but they would restrict the area of pregnancy to 6 weeks or so.

Mr. LATIMER. The great majority are 6 weeks. Yes, sir.

Mr. SARASIN. Do you think that is a reasonable restriction, and should the legislation we are considering try to copy that format?

Mr. LATIMER. Well, I would hesitate to get into that. I think there are cases in which it is perfectly legitimate for a woman to stay out for more than 6 weeks because there are complications, and there are other cases, even in Xerox, which is an unusually long period, there are many cases in which many people take less than that, some around 2 weeks.

So, as long as the average stays around 6 weeks, I think that unless there is evidence of abuse, then there shouldn't be if it is appropriately policed, as with any other kind of disability, I would think that ordinary administrative procedures would eliminate any unjustifiably long period of absence.

Mr. SARASIN. So you feel that the ordinary checkup or requirement that the disability be continuously proven would tend to limit any abuse, so if you have a situation where a 26-week period is available, that you don't feel that that would be just taken as matter of right?

Mr. LATIMER. No, it depends entirely on the degree to which there is followup on the disability. If it lacks checking on the period, there may be some advantage to it just as there is on any other kind of disability.

Mr. SARASIN. The language in the legislation talks about, "and women affected by pregnancy, childbirth, or medical conditions." Would you read the word "affected" to include a period of disability based on the condition of the child? Or only on the mother?

Mr. LATIMER. No.

Mr. SARASIN. The second section of legislation, I think, is unconstitutional. Of course, we can't mandate that the company provide these things, but it says, an employer who is now providing a disability plan cannot reduce the benefits, in other words, cannot make any adjustment somewhere else in the plan to take care of the cost that this will add to it. Do you have any comment about that section?

Mr. LATIMER. Well, I would think it is comparable to what the Congress has done recently, which has mandated reductions in pensions except in a showing of hardship or no retroactive reduction.

Mr. SARASIN. Well, ERISA, of course, does not provide that. ERISA doesn't mandate that a plan be maintained in effect. This would require that a plan remain in effect and no adjustment be made, whether the employer can afford it or not, whether in the future the employer could afford it. Certainly ERISA never went that far in pension plans. A pension could terminate under ERISA at $6,000 per man.

Mr. LATIMER. I hadn't read the plan to pertain to perpetuity.

Mr. SARASIN. That is what the bill says, and you may not make an adjustment, so if you are trying to cover the cost with the same payment, you can't adjust the limitations anywhere else.

One of the concerns I have with the legislation is that there are areas where we do restrict the coverage, and certain conditions are exempted from coverage. Psychiatric treatment is often exempted under a plan, for example, as a cost-related item, and yet this would say that certain provisions would have to be put in and then no other adjustment within the plan could be made, whether the employer can afford the increased contribution or not.

At any rate, it is your feeling that the use of the disability payment—I am more interested in that than I am in the medical coverage

provision. You feel that a 6- or 8-week average or an 8-week period would probably be the extent of disability payment?

Mr. LATIMER. Yes, I do.

Mr. SARASIN. Is it reasonable to assume that anything beyond that would require some extraordinary showing of disability, some complication in the ordinary course of pregnancy, childbirth, 6 or 8 weeks?

Mr. LATIMER. Anything beyond 8 weeks would certainly involve an examination by a doctor to confirm that a condition exists which does.

Mr. SARASIN. In order to come within the figures you have projected here and the increase in cost you have projected, would it be reasonable for us to provide a section, provide the language that says 6 weeks or 8 weeks or whatever, and then beyond that only on showing of medical cause?

Mr. LATIMER. Well, if the employer is prudent. I think he would do it anyway. I don't know why he would want to spend money on disability if there were no disability present.

Mr. SARASIN. Thank you, sir.

Mr. HAWKINS. Mr. Le Fante?

Mr. LE FANTE. No questions.

Mr. HAWKINS. Mr. Purcell?

Mr. PURCELL. No questions.

Mr. HAWKINS. Mr. Weiss?

Mr. WEISS. Thank you, Mr. Chairman, no.

Mr. HAWKINS. Mr. Latimer, I suppose that concludes your testimony before the committee. I wish again to thank you for your testimony and for the manner in which you presented the issue to the committee. I think it has been very clearcut and very well supported.

May the Chair announce that some time during the morning the bells will begin ringing to indicate a vote in the House, so we may find it necessary at times to interrupt the witnesses while the committee members go to the House and vote. If we do so at any time, I hope the witnesses will understand the reasons why.

We will just take a 5-minute recess, if that occurs. We will try to proceed just as rapidly as possible and to complete all the witnesses this morning.

I would hope that the members will cooperate by returning as promptly as possible. We anticipate that the session will not last much beyond 11 o'clock.

The next witness is Mr. Fred Thompson, chairman of the Labor Relations Committee, Electronic Industries Association, and he is accompanied by Mr. John Connell, director of the Safety and Training Division of Magnavox, and Mr. Epranian, of AVX Corp.

Gentlemen, we welcome you as witnesses before the committee representing some of the outstanding corporations, and we certainly look forward to your testimony. The statement as submitted by Mr. Thompson, which we have before us, will be entered in the record at this point, and we would appreciate your summarizing it.

[The prepared statement of Fred Thompson follows:]

TESTIMONY OF THE
ELECTRONIC INDUSTRIES ASSOCIATION
ON H.R. 5055
TO AMEND THE CIVIL RIGHTS ACT OF 1964
TO PROHIBIT SEX DISCRIMINATION ON THE BASIS OF PREGNANCY
BEFORE THE HOUSE OF REPRESENTATIVES
HOUSE EDUCATION AND LABOR COMMITTEE
SUBCOMMITTEE ON EMPLOYMENT OPPORTUNITIES
ON JUNE 29, 1977

Presented By:
Fred T. Thompson, Chairman
of the Labor Relations Committee of
EIA's Industrial Relations Council

Mr. Chairman, Members of this Committee, my name is Fred T. Thompson, I am Chairman of the Labor Relations Committee of EIA's Industrial Relations Council. I am pleased to have this opportunity today to present the views of the Electronic Industries Association on H.R. 5055, legislation which would ban the exclusion of pregnancy disability benefits from employer disability plans.

The Electronic Industries Association is the national organization representing the electronic manufacturers of the United States. Its 275 member companies range from manufacturers of the smallest electronic part to major corporations that design and produce the most sophisticated systems used in our defense and space programs, as well as for a variety of commercial areas. Our members account for over 80% of the $35 billion electronic market, and are responsible for the employment of over a million people.

Mr. Chairman, for the Electronic Industries Association, I have filed with your committee a statement which is essentially the relevant testimony presented by EIA to the Senate Human Resource's Subcommittee on Labor. (attachment) That statement includes our position that:

1. H.R. 5055 mandates a change in the philosophy underlying the concept of accident and sickness benefits. In other words, we feel that pregnancy is generally controllable and voluntary, not an unexpected or unplanned disruption to a work schedule.

2. The purpose of Title VII is to eliminate sex and racial discrimination in employment -- not to legislate a benefit or a level of an existing benefit. H.R. 5055 is an edict that a benefit will be granted to one class of women, those who are pregnant -- and in effect discriminates against non-pregnant females and males!

3. All pregnancy related benefits are extremely costly and in the case of disability benefits, the present disproportionate cost of providing disability benefits to women would be further and negatively affected. Other costs associated with this legislation are:

   a. Productivity costs - employe replacements for women on pregnancy leaves are not as productive as experienced workers. We feel that providing disability benefits will also result in longer leaves.

   b. Replacement costs - it costs money to screen and hire new employes, and as the Gilbert case points out, 40-50 percent of females on pregnancy leaves do not return.

   c. The actual premiums for disability coverage are estimated to be at least 26% higher than current premiums. Additionally, it is estimated that this legislation would affect annual national hospital-medical costs by one billion dollars.

   d. Administrative costs - Simply, the EEOC already has a significant caseload backlog, and staffing to investigate claims related to this legislation could create an unsurmountable burden.

Additionally, all of these factors combine to further increase our national health costs and fuel inflation as the costs will undoubtedly, wherever possible (rarely in our industry) be passed on to the consumer.

4. H.R. 5055 is an unwarranted intrusion into the collective bargaining process and is especially apparent in our industry which during 1976, saw a large number of electronic company members conclude major negotiations. Any legislation on this subject should consider that fact.

Mr. Chairman, in addition to the statement from EIA representing our industry viewpoint, representatives of two companies of differing size and different experiences with disability benefits are with me today. Mr. John Connell represents Magnavox (attachment 3) Consumer Electronics Company, and Ardie Epranian represents AVX Ceramics, a division (text not included) of AVC Corporation. I will also give you some idea of how this legislation could impact the Company I work for, Sprague Electric Company.

Sprague Electric Company is one of the world's largest electronic component manufacturers and our annual sales are in the area of 200 million. We are a very labor intensive industry which among other things, means we face stiff

competition from offshore competitors who operate in lower wage areas. Our labor force numbers about 7,500 people comprised of approximately 65% females.

Our hospital-medical plan does cover costs associated with pregnancies, everything from doctors' fees to room charges. However, like many policies, ours includes a nine-month waiting period from date of hire in the case of pregnancy coverage. Our policy would not cover any physical condition requiring medical attention that existed prior to the date one became eligible for our insurance plan. This is as true for a broken arm as it is for a pregnancy case. Yet, we are concerned that this legislation would disallow such a waiting period in the case of pregnancies and our carrier has estimated that claims payments would increase 15%, or about $480,000 in our case. If this were the case, employers would be faced with the possibility that pregnant females would apply for work just to obtain medical coverage and disability payments!

With regard to disability benefits, my company presently does not provide disability payments for females on pregnancy leaves. Two union contracts do not provide this nor do we have it in our non-union locations. The reason is simple -- all concerned feel we can get more for our benefit dollars by providing other benefits. If we were obligated to provide disability benefits in pregnancy cases, we would be looking at an additional $273,000 permium. And at that, we presently have a 20 week plan. As we increase the number of weeks of coverage, we would increase the costs. It's been 51 years since Mr. Sprague started the Company in his kitchen in Quincy, Massachusetts, yet we still find ourselves very labor intensive and working with the slimmest of profit margins. When you talk about legislating a special benefit for a particular employe group, which benefit costs us a million dollars, you are posing a substantial threat to the profitability of a Company that provides 7,500 U.S. jobs!

As a labor lawyer, there is another aspect of this legislation that causes me concern and that is how it interferes with the collective bargaining process. For one thing, companies and unions have negotiated and agreed where to spend the available dollars. For example, in 1976 one of my Company's plants reached a three-year agreement that did not include disability benefits for pregnant females. (As you will note from my Senate Testimony, major labor agreements in the electronics industry were reached last year.) The question is whether or not companies and unions are to open up their contracts for renegotiation due to this bill. Or is this solely an employer cost which labor is attempting to negotiate with Congress -- rather than with employers? If the contracts are to be opened may other benefits be reduced to cover the increased costs due to legislation of this type? Our position here is that if H.R. 5055 were passed, we would urge it include an amendment to insure that companies under contract with unions would not be required to provide this benefit or negotiate it until their current agreements come up for renewal.

Related to this is the fact that in most companies employes pay a portion of health insurance costs. In companies like ours one finds that in spite of new benefits and increasing premiums for old benefits, employe contributions have not increased over the years. Are we now to impose a new cost on all employes in order to pay for a benefit for a special class of employe?

Summing up, we do not feel that the Gilbert decision sanctions a sex based discrimination in additional benefits but instead H.R. 5055 would legislate a special sex based benefit granted only to certain females. Secondly, the costs of this benefit are so substantial that existing benefit plans will be negatively affected and finally, as it is written this bill constitutes an unnecessary governmental interference with collective bargaining.

Thank you,

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The Electronic Industries Association fully supports the goal of Equal Employment Opportunity for all. However, we do not feel the legislation at issue today promotes our mutual goal. Further, we feel the provisions of H.R. 5055 are at variance with the philosophy on which disability benefits are based, and the collective bargaining processes established by the National Labor Relations Act.

Traditionally, the purpose of disability benefits were to enable the employee to cope with unexpected or unplanned disruptions in their work schedules, resulting in a loss of compensation. We feel that mandatory extension of pregnancy disability benefits, for a pregnancy that may be voluntary as well as unexpected, breaks from the overriding philosophy on which these benefits are normally based.

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Further, we feel that the passage of H.R. 5055 would be unnecessarily discriminatory against those employees, male or female, who cannot or choose not to take advantage of the benefit, for whatever reason. Since these employees already help subsidize much of the medical costs associated with pregnancy, to call for the mandatory extension of benefits for pregnancy disability leave compounds the inequity of the circumstances.

During 1976, a large number of the companies in the electronics industry concluded major labor negotiations. The issue of pregnancy disability benefits was increasingly a subject of negotiations. The extension of fringe benefits such as pregnancy disability benefits has always been a factor left to the collective bargaining procedures under the National Labor Relations Act. We feel that the enactment of separate legislation making pregnancy disability benefits mandatory unnecessarily intrudes into the collective bargaining sphere, and is just one more limitation placed on the negotiating freedom of both the employer and the employee alike. This Act would establish a precedent which could lead to further federal determinations of the distribution of personal compensation.

The passage of H.R. 5055 would result in the renegotiation of the major labor contracts our industry has recently negotiated in order to make the benefit packages extended therein consistent with the proposed legislation. Because employers have only limited resources they can commit to fringe benefit packages, this renegotiation could well result in the loss of benefits in other areas which assist the total workforce, including women. Any legislation which is passed in the area of employee benefit plans should exempt current collective bargaining agreements and contractual relationships between employees and employers.

It is the view of the Electronic Industries Association that most companies already extend benefits to cover virtually all of the medical expenses associated with the pregnancy, as well as the costs of any complications which arise therefrom. These cost factors are amongst those over which an employer can presume some predictability. However, by extending benefits to cover personal compensation for absence due to pregnancy, the legislation introduces a new level of unassessability to the total cost of the benefit program. As is evident by the recent hearings in the House of Representatives on similar legislation, a widely varying array of numbers are being submitted as indicative of the average length of pregnancy leave, greatly impacting estimates of the cost of implementing the subject benefit plans.

We prefer not to speculate on the total cost of implementing H.R. 5055, but would like to submit for your consideration those factors we feel should appropriately be assessed in such an estimation. To begin with there is the direct cost to industry, lying primarily in increased premiums on benefit plans. According to an assessment by Traveler's Insurance Company, the addition of <u>six</u> weeks of pregnancy disability benefits to those plans which currently exclude such payments, would mean an average of 13.2% increase in premiums. Further, allotting for such benefits over a twenty-six week period would result in a 26% increase in premiums, to be paid not only by the company, but by all employees. The above analysis is based on the assumption of a 40% female workforce. Because the electronics industry utilizes an almost 60% female workforce, these increases would likely be higher in our particular instance.

At this point it is relevant to emphasize another very direct cost and that is the

cost of loss of productivity. None of our members denies pregnancy leaves--we surely recognize the difference in productivity between an experienced worker and a temporary replacement and frankly, we look forward to an early return of those experienced workers who are out on leave of any kind, including pregnancy. Unfortunately, and as you know, there is data available such as supplied in the Gilbert transcript that in pregnancy leave situations, 40-50% of the people involved do not return from pregnancy leave and industry is faced with the difficult and expensive task of screening and ultimately finding permanent replacements. This cost element looms much larger in 1977 than many people would imagine!

In the end, the widely divergent perspectives on the average length of pregnancy disability are meaningless with regard to any one individual's leave of absence due to pregnancy. One person may be actually disabled for only a day or two while another's disability may in fact extend to many weeks--even months. The EIA feels that differences of opinion between the employer and the employee utilizing such benefits are inevitable. In such instances, who is to be the final determinant of an appropriate length of time. As an amendment to Title VII of the Civil Rights Act of 1964, the primary enforcement agency for H.R. 5055 would be the Equal Employment Opportunity Commission. In this regard, the Electronic Industries Association would like to raise several concerns. First, the method of operation utilized by the EEOC since its inception would seem to be inapplicable to controversies which would arise over the subject legislation. We would submit that the field operatives of the Commission would be unqualified to determine the validity of either claim in a dispute on the duration over which pregnancy disability benefits should be extended. Second, we do not believe the EEOC is administratively designed to cope with the controversies which would arise out of the mandatory extension of pregnancy disability benefits under the Civil Rights Act of 1964.

Because EEOC is facing at least a three year backlog in its case load disposition, we feel that any broadening of its scope of cognizance at this point in time will only serve to further the difficulties that that agency is having in effecting its current Congressional mandate. Thus, the costs of Title VII litigation would increase not only for industry, but for the government as well.

Because of the growing trend of women joining the workforce, a result of both changing roles and affirmative action, costs will inevitably rise over those estimates set forth on the basis of current statistics. Thus, those companies taking positive action to employ a proportional number of women in their workforce will be affected more dramatically by the premiums resulting from such benefits, than would companies who are delinquent in their affirmative action efforts.

Because fringe benefit plans are either fully or partially based on employee contributions, there would be an additional cost which would be incurred by all employees, not just those eligible for pregnancy disability benefits. The cost to employees would result primarily from having to pay higher premium rates to cover the cost of a leave for a disability which affects a limited portion of the workforce. In addition, because companies have only limited resources which can be expended on the employee benefit programs, benefits in other areas which affect all employees, including women, might have to be limited. Thus employees might be denied benefits which would be more pertinent to their particular circumstances.

One should also review this legislation from the perspective of the soaring costs of health programs in our nation. If the Administration and Congress are serious in their efforts to reduce or hold the line on increasing costs in this area, then passage of this bill which guarantees increased costs--no matter which figures one

accepts--this is a step in the wrong direction.

Also, we would like to call your attention to an unfortunate result of the enactment of the Employee Retirement Income Security Act of 1974. Since passage of ERISA, there have been in excess of 5,035 pension plans terminated, due largely to the inability of the employers to deal with the administrative burden and additional cost of compliance with the provisions therein. There can be no estimate of the number of retirement plans which were never initiated as a result of this legislation. By legislating the benefits which must be paid under employee benefit plans, Congress is in essence telling the employer and the employees how their benefit funds will be allocated. Thus, the employer who offers such benefits to their employees is at a distinct disadvantage.

It is unrealistic to presume that the sum of the foregoing costs will not result in the otherwise unnecessary increases in the cost of the product for the consumer, further fueling inflationary forces. Further, the extension of such benefits will result in more capital being tied up in providing employee fringe benefit packages, leaving fewer funds available for capital investment which, in the end, means jobs.

Mr. Chairman, the EIA is here to present a reasoned position against passage of H.R. 5055, not to detract from the goal of equality in the workplace for both sexes, nor to criticize the equal employment goals of the proponents. However, after a review of the relevant testimony in the House, we are disturbed that certain proponents have presented arguments based not upon substance, but emotion. For example, there was much made of the possibility that a pregnant female could be laid off--for being pregnant--and never recalled. Or some have stated that medical coverage for other causes ceases during a pregnancy leave or all senority is lost.

The EEOC already has the jurisdiction and authority to move against such practices and in any event the EIA supports the EEOC in this regard. In summary, what we oppose is the enactment of a level of benefit that introduces a significant cost factor and without regard to the interest of the parties in arriving at a benefit level satisfactory to both.

Thank you for this opportunity to present our views on this matter.

STATEMENT OF FRED T. THOMPSON, CHAIRMAN, LABOR RELATIONS COMMITTEE, ELECTRONIC INDUSTRIES ASSOCIATION, NORTH ADAMS, MASS.

Mr. THOMPSON. Thank you, sir.

I am pleased to speak here today representing the views of the Electronic Industries Association, also on H.R. 5055.

The Electronic Industries Association is a national organization representing the electronic manufacturers of the United States. Its 275 member companies range from manufacturers of the smallest electronic part to major corporations that design and produce the most sophisticated systems used in our defense and space programs, as well as for a variety of commercial areas.

Our members account for over 80 percent of the $35 billion electronics market, and are responsible for the employment of over 1 million people.

Mr. Chairman, for the EIA, I have filed with your committee a statement which is essentially the testimony presented by EIA to the Senate Human Resources Subcommittee on Labor. That statement includes our position, and I will summarize.

First, H.R. 5055 mandates a change in the philosophy underlying the concept of accident and sickness benefits. In other words, we feel that pregnancy is generally controllable and voluntary, not an unexpected or unplanned disruption to a work schedule.

Second, the purpose of title VII is to eliminate sex and racial discrimination in employment, not to legislate a benefit or a level of an existing benefit. We feel that H.R. 5055 is an edict that a benefit will be granted to one class of women, those who are pregnant, and in effect discriminates against nonpregnant females and males.

Third, all pregnancy-related benefits are extremely costly, and in the case of disability benefits, the present disproportionate cost of providing disability benefits to women would be further and negatively affected. Other costs associated with this legislation, and I think that some of these have been overlooked, are productivity costs. Employee replacements for women on pregnancy leaves are not as productive as experienced workers. We feel that providing disability benefits will result in longer leaves.

Replacement costs. It costs money to screen and hire new employees, and as the Gilbert case points out, 40 to 50 percent of females on pregnancy leaves do not return.

Third, the actual premiums for disability coverage are estimated to be at least 26-percent higher than current premiums. Additionally, it is estimated that this legislation would affect annual national hospital-medical insurance premiums by $1 billion.

The administrative costs, simply, the EEOC already has a significant caseload backlog, and staffing to investigate claims related to this legislation could create an insurmountable burden.

Additionally, all of these economic factors combine to further increase our national health cost and fuel inflation as the costs will undoubtedly, wherever possible—and I say rarely in my particular industry because we are in an industry that competes with the low

labor cost in offshore countries, so we can't pass our costs directly on to the consumer as easily as some of the end product manufacturers.

Last, we feel H.R. 5055 is an unwarranted intrusion into the collective bargaining process, and is especially apparent in our industry, which during 1976 saw a large number of electronic company members conclude major negotiations. Any legislation on this subject should consider that fact.

Now, as you know, in addition to that statement from EIA, which represents our industry viewpoint, representatives of two companies of differing size and different experience with disability benefits are with me today, and will express their companies' views. Mr. John Connell represents Magnavox Corp. of Greenville, Tenn., and Ardie Epranian represents AVX Corp. I will also give you some idea of how this legislation could impact the company I work for, Sprague Electric Co.

Sprague Electric is one of the world's largest electronic component manufacturers, and our annual sales are in the area of $200 million. We are a very labor intensive industry which, among other things, means we face stiff competition from offshore competitors who operate in lower wage areas. Presently our labor force numbers about 7,500 people, comprised of approximately 65-percent female.

Our hospital-medical plan does cover costs associated with pregnancies, everything from doctors' fees to room charges; however, like many policies, ours includes a 9-month waiting period from date of hire or from date of eligibility for the insurance in the case of pregnancy coverage.

Our policy would not cover any physical condition requiring medical attention that existed prior to the date one became eligible for this hospital-medical plan. This is as true for a broken arm as it is a pregnancy case, yet we are concerned that this legislation would disallow such a waiting period in the case of pregnancies, and our carrier has estimated that claims payments would increase 15 percent or about $480,000 in our case.

If this were the case, employers would be faced with the possibility that pregnant females would apply for work just to obtain medical coverage and disability payments.

With regard to the disability benefits and its effect on my company, my company presently does not provide disability benefits for females on pregnancy leaves. Two union contracts do not provide this, nor do we have it in our nonunion locations. The reason is simple: all concerned feel we can get more for our benefit dollars by providing other benefits.

If we were obligated to provide disability benefits in pregnancy cases, we would be looking at an additional $273,000 premium.

Mr. HAWKINS. Mr. Thompson, at this point the committee must take a 5-minute recess for the purpose of voting. We will return just as promptly as possible and continue the testimony. The committee is in recess for 5 minutes.

[A brief recess was taken.]

Mr. HAWKINS. The committee is reconvened.

Mr. Thompson, with apologies to you, may we ask you to proceed?

Mr. THOMPSON. Thank you.

I had mentioned lastly that to provide disability benefits in pregnancy cases would cost the Sprague Electric Co. an additional $270,000 premium, and that we presently have a 20-week disability program. As we increase the number of weeks of coverage, for example, to 26, or 52, or whatever, we would increase the costs further. I make note of the fact that it has been 51 years since Mr. Sprague himself started the company at his home in Quincy, Mass., yet we still find ourselves in a very labor-intensive industry, and working with the slimmest of profit margins.

So, when you are talking about legislating a special benefit for a particular employee group, which benefit costs us, or could, $1 million, you are posing a substantial threat to the profitability of a company that provides 7,500 U.S. jobs.

Now, as a labor lawyer, there is another aspect of this legislation that causes me concern, and that is how it interferes with the collective bargaining process. For one thing, companies and unions have negotiated and agreed where to spend the available dollars. For example, in 1976 one of my company's plants reached a 3-year agreement that did not include disability benefits for pregnant females.

The question is whether or not companies and unions are to open up their contracts for renegotiation due to this bill, or is this solely an employer cost which labor is attempting to negotiate with Congress rather than employers? If the contracts are to be opened, may other benefits be reduced to cover the increased cost to do this legislation?

Our position here is that if H.R. 5055 were passed, we would urge it include an amendment to insure that companies under contract would not be required to provide this benefit or renegotiate until their current agreements come up for renewal.

Related to this is the fact that most company employees pay a portion of their health insurance costs. However, in companies like ours, one finds that in spite of new benefits and increasing premiums for old benefits, employee contributions have not increased over the years. Are we now to impose a new cost on all employees in order to pay for a benefit for a special class of employee?

Summing up, we do not feel that the Gilbert decision sanctions a sex-based discrimination in additional benefits, but instead H.R. 5055 would legislate a special sex-based benefit granted only to certain females.

Second, the costs of this benefit are so substantial that existing benefit plans will be negatively affected. Finally, as it is written, this bill constitutes an unnecessary governmental interference with collective bargaining.

I will now turn it over to my friend, Mr. Connell, or at your pleasure.

Mr. HAWKINS. Mr. Connell, do you have a prepared statement?

Mr. CONNELL. Yes, sir. It is a very brief one.

Mr. HAWKINS. It will be included in the record at this point. You may proceed, Mr. Connell.

Mr. CONNELL. I think I will read it. It is rather short.

Mr. HAWKINS. Yes; you may proceed, sir.

[The prepared statement of John Connell follows:]

TESTIMONY OF THE
MAGNAVOX CONSUMER ELECTRONICS COMPANY
ON H.R. 5055
TO AMEND THE CIVIL RIGHTS ACT OF 1964
TO PROHIBIT SEX DISCRMINIATION ON THE BASIS OF PREGNANCY
BEFORE THE HOUSE OF REPRESENTATIVES
HOUSE EDUCATION AND LABOR COMMITTEE
SUBCOMMITTEE ON EMPLOYMENT OPPORTUNITIES
ON JUNE 29, 1977

Presented By:
John M. Connell
Industrial Relations Officer of
EIA's Industrial Relations Council

My name is John Connell. I am an Industrial Relation's Officer with the Magnavox Consumer Electronics Company, a wholly owned subsidiary of North American Philips Corporation. We manufacture and market home entertainment equipment including televisions, stereos, video games, etc. We employ over 7,000 people including many women of child bearing age who are attracted to the light assembly work which predominates in our manufacturing operations.

For the past 35 years, we have provided for our factory employees a health insurance program which includes provisions for weekly benefits when absence from work is caused by sickness or accident. Included under this benefit is a provision that employees on maternity leave may receive six weeks of such payments.

While we are not opposed to providing any benefits of this type, as indicated by our long standing policy, we do feel very strongly that an open end law such as proposed would be subject to many abuses and would become a heavy financial burden to companies such as ours.

Other types of sickness and accident disability under our plan provide for payments up to 26 weeks where required.

A recent survey in our company revealed that in 1976, we had 107 employees take maternity leaves, and the total cost of weekly benefits amounted to $24,761. If the figure of 26 weeks were used as would be the case under the proposal, the cost would have totaled $141,420.

We feel this is a very sizable addition to the cost of our doing business and of course would necessitate passing on such increases to the consumer, and in turn,

place our industry and company in an even less favorable position to compete with the unfair Japanese competition which continues to plague our company and has cost so many of our people in this industry their jobs.

In addition, we feel that home responsibilities concomitant with maternity, results many times in decisions by the mothers not to return to work. Under the provisions of this bill, we would be subject to paying an additional 20 weeks compensation to an employee who has no intention of returning. Furthermore, for those who plan to return, there would certainly be a temptation to extend their absence beyond the actual required disability time.

We feel, in conclusion, that if this bill becomes law, that it should contain a specific time limit such as the six week period now in effect in our companies health services program.

STATEMENT OF JOHN CONNELL, DIRECTOR, SAFETY AND TRAINING, MAGNAVOX CONSUMER ELECTRONICS CORP., GREENVILLE, TENN.

Mr. CONNELL. My name is John Connell. I am an industrial relations officer with the Magnavox Consumer Electronics Corp., a wholly owned subsidiary of North American Philips Corp.

We manufacture and market home entertainment equipment including televisions, stereos, video games, et cetera. We employ over 7,000 people, including many women of child-bearing age who are attracted to the light assembly work which predominates in our manufacturing operations.

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Furthermore, for those who plan to return, there would certainly be a temptation to extend their absence beyond the actual required disability time.

We feel, in conclusion, that if this bill becomes law, that it should contain a specific time limit such as the 6-week period now in effect in our company's health services program.

That concludes it.

Mr. HAWKINS. Thank you.

Now, Mr. Thompson, I think you indicated that Mr. Epranian also has a statement.

Mr. THOMPSON. Yes, he does.

Mr. HAWKINS. We have the statement. The statement in its entirety will be entered into the record, then, at this point Mr. Epranian, may I suggest that you summarize from the statement, please.

Mr. EPRANIAN. I will try, sir.

[The prepared statement of Mr. A. Epranian follows:]

TEXT of TESTIMONY

on June 29, 1977

before

HOUSE OF REPRESENTATIVES

U.S. CONGRESS

COMMITTEE

Re:

Proposed Legislation

on

Disability Benefits for Pregnancy

by: Mr. A. Epranian
Corporate Director
Industrial Relations
AVX Corporation
Seneca Avenue
Olean, N.Y. 14760
716-372-6611

Much has been said here and in other forums regarding the broad ramifications and more general philosophical aspects of mandating disability benefits for maternity leave. My testimony today will try to zero in on the direct impact of such legislation on the individual company at the plant level.

My Company, AVX Corporation, is engaged in the manufacture of electronic parts, primarily ceramic capacitors at the present time, used in the television, data processing, telecommunications and space industries amongst others, and as such are heavy subcontractors to electronic components and equipment manufacturers including the U.S. government. This has been an industry characterized by rapidly changing technology and product obsolescence, as well as heavy competition (much from abroad in recent years) and price degeneration.

For these reasons and the light manufacturing aspects of our production processes, historically we, like most others in our business, have employed a great proportion of secondary wage earners in our work force population, accordingly most of whom not surprisingly have been and are women. Thus, proposed legislation such as this has a very heavily disparate and disproportionate cost impact on us versus other types of business. We therefore feel a very strong vested interest against such legislation, and view our experience and circumstance as worthy of some authority on the subject.

In one of our plants where we currently provide minimum statutory medical disability benefits, the cost to extend the same benefits for maternity has been quoted at almost double our current premium for all other medical disability. And this is based on the best quote from many insurance carriers, many of whom will not even write the coverage, after extensive marketing effort. The resulting cost was calculated at over $1,000 per employee claim based on our past 1½ years maternity experience. However, to obtain such coverage would require switching carriers from our very competitive current premium rates with an additional cost increase of another $200 or approximately $1200 per claim in total.

But this is only part of the story. The real cost is in the hidden increase in claims incidence and additional time lost that would be the inevitable consequence. Let me clarify this point by comparison between this plant as mentioned currently providing medical disability benefits and another facility with no disability benefits at all.

In the latter case, medical and maternity leaves together run rather consistently at about 30% of all other absence. However, in the former case where disability benefits on medical leave are provided, the ratio is an extraordinary 250% difference! The reason is obvious and can be attributed to no other cause than the monetary benefits for medical leave in one plant versus none in the other.

With medical versus maternity lost time running at approximately a 2 to 1 ratio, it is not difficult to perceive and project the adverse impact extending disability benefits to maternity would have. We estimate the effect would be a startling 50% increase in additional lost time in maternity and medical leave to an astronomical 350% over and above all other lost time from work!

As if the previously mentioned liability of $1,200 per employee claim were not prohibitive enough, when this kind of increase in expected claims experience is added into the picture the compounded liability jumps to close to $2,000 per claim! This is verging on the kind of statistics quoted in medical and health benefits field, and we all know the runaway costs that have been experienced in that area.

Since these remarks have been directed at the potential increased cost and experience, it is only natural that you ask why this kind of automatic escalation cannot be controlled so that benefits of this kind can be granted at reasonable cost? The answer is very simple - human nature!! Let me explain this further.

No doubt the first thought that comes to mind is that this can effectively

be controlled by qualified and expert medical opinion and validation i.e. physicians, the same way (and only way) medical disability has supposedly been controlled. However, as I have already demonstrated, this is and has not been an effective control at all. Why not? Because traditionally physicians rely on what their patients tell them, especially in more minor medical situations, since it is presumed that the patient is ill and wants to be cured as soon as possible so they can go back to work and income resumption. In other words, their diagnosis and treatment (particularly as far as being out from work) is largely based and founded on information provided by the patient. This would be fine under normal circumstances out of the industrial medicine arena. However, when it is in the patients interest to be certified as disabled when the monetary motivation is not that much different than going to work, it is rather easy to envision the abuses and extra time lost that can and do occur. The doctor is helpless to act on other than what they are told by their patients, generally know and care little about the actual work environment, and unfortunately challenge or dispute is extremely difficult if not impossible most of the time because it generally requires another physicians opinion, which is based on no better data than the first. Besides, it is not truly the crux of the problem, which is the employee's crossed motivation!

So, in fact, no matter what the effect or method, once monetary benefits are attached to any disability benefit the incidence of claims and time lost invariably rises, and in our times and as illustrated in my earlier remarks, rather substantially. After 20 years in my field of industrial relations with extensive personal as well as statistical experience in this area, I am absolutely convinced there can be no other result.

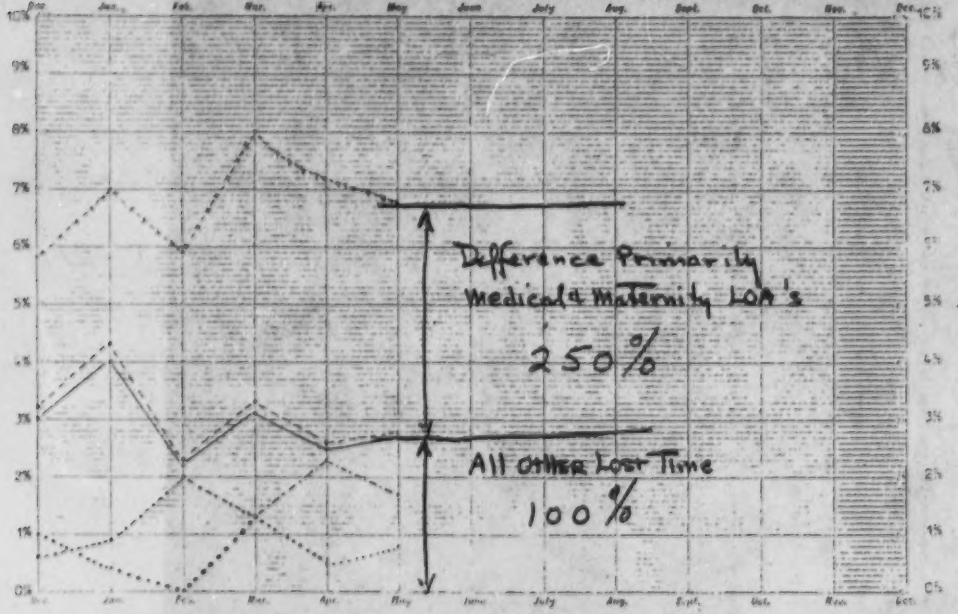
Lastly, it should be stressed that what this advocate and employers most object to and strenuously oppose is the mandatory nature of the proposed legislation. Our employees (mostly female) and their unions by whom they are mostly represented have historically elected other benefits over disability for any reason, let alone maternity, and to the best of my knowledge have never pressed

for improvements in this area over other benefit advances. And we categorically reject the proposition that legislative wisdom and determination should supplant our very successful and world admired collective bargaining process and their inherent right of both management and labor to mutual choice and self determination over the selection of economically responsible advances in the area of benefits and employment terms.

In conclusion, we very strongly urge against any legislation mandating disability benefits on pregnancy in any way. Further commentary and exhibits accompany the written text of these remarks.

Disability Benefits Provided for Medical Leave of Absence Only (No Maternity)

PLANT #1
ABSENTEEISM RATIO
[redacted]



Year of 1977.

52

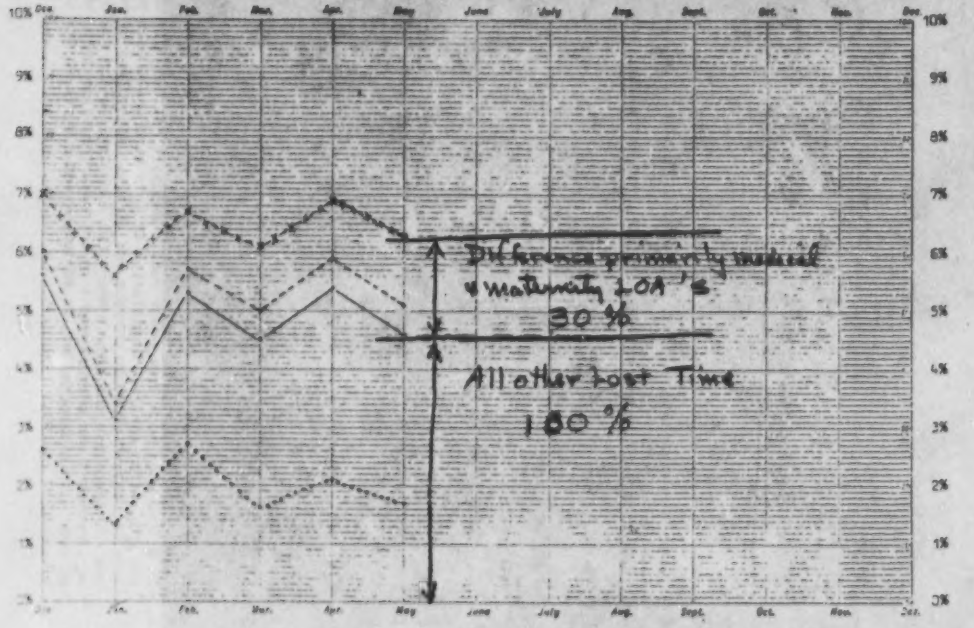
48

No Disability Benefits

PLANT "L"

ABSENTEEISM RATIO

KEY:
Total Absence x-x-x
Total Intermittent Absence
Hourly Intermittent Absence (IEEW)
Non-Exempt Intermittent Absence .....



Year of 1977

AVX CERAMICS
DIVISION OF AVX CORPORATION

AVX Ceramics
Sycamore Street
Olean, N.Y. 14760
716-372-6611
TWX 510-245-2815

May 20, 1977

Text of letter addressed to all Members of the Senate Committee on Human Relations Re: S. 995 Prosed Bill

Dear Senator

This letter is to register our vigorous and total opposition to S.995 that would prohibit the exclusion of pregnancy disability benefits on maternity leaves of absence. The reasons are manifold, some of which we shall try to enumerate.

1. The Supreme Court has already upheld the fact that Title VII of the 1964 Civil Rights Act did not in its original intent and purpose contemplate let alone mandate monetary benefits for maternity leave, but only that women should not be discriminated against for leave on such pregnancy. As a matter of fact, the reverse is true that this legislation would be discriminatory, not only against men but employees of both sexes on other kinds of unpaid leave. To virtually mandate financial benefits for pregnancy by law of the land in the namesake of anti-sex discrimination is specious and illogical rationalization.

2. The cost that such legislation would impose has been estimated at over $1.5 billion by the insurance industry. The Supreme Court has already ruled in the Geduldig case that the State of California had good reason and cause to exclude disability benefits for pregnancy under their UCD program because of the high cost it would impose on the taxpayers of that state to support such benefits. Certainly, in all fairness the same should be held equally valid in the private sector, and it is hard to conceive of $1.5 billion as not being of enormous cost consequence and impact.

3. In contrast to Civil Rights legislation, to date there has been no popular demonstration of similar legislation at the State level. Even in New York State where there has been a related court decision of influence on this issue, proposed state legislation to date falls far short of S. 995, and so far state disability law still does not require maternity benefits.

4. In a time when such tremendous public emphasis has been placed on ecology and population control, legislation of this kind would seem to us to be totally contradictory in purpose and effect. Regardless of to what degree one may speculate the impact might be, such legislation can only be viewed as inducement and encouragement to increase the birth rate, which is totally at odds with widespread public sentement and support to the contrary.

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5. Although sterilization may times in the past, the fact still remains that pregnancy in the vast majority of instances is self-induced and voluntary, which is totally unlike any other medical interruption of employment. To the best of our knowledge self-induced medical infirmity is still considered unusual and abnormal, and by the by where it does occur for other cause is generally disqualification for disability benefits.

6. The granting of mandatory disability benefits for women would have a widely disparate and inequitable effect throughout the country on employers, male employees, and employees of both sexes of non-childbearing age. In spite of great effort to the contrary, many industries as well as occupations have traditionally and are still characterized by heavily male or female population. Not only would the cost to support such benefits be disparately shouldered by certain employers over others, but such legislation would be in fact a form of both reverse sex and age discrimination as well.

7. Again, in a time when more and more women are entering the labor market and the percentage of females in the work force increases every year, it would seem to us that such legislation would be in opposition and a deterent to achieving greater and greater equal opportunity for women in employment by adding the extra burden of the additional disproportionate cost for such benefits. The loss of productivity is significant enough. Obligatory disability benefits on top of that is "rubbing salt into the wound", and certainly counter-productive to our EEO goals for women.

Assuredly, the list could go on with further time and research. However, we trust the above will be persuasion enough, and urgently solicit your opposition to passage of S. 995 at all quarters.

Sincerely yours

AVX CERAMICS

A. Efranian, AEP
Corporate Director
Industrial Relations

AE/caj

STATEMENT OF A. EPRANIAN, CORPORATE DIRECTOR, INDUSTRIAL RELATIONS, AVX CORP., OLEAN, N.Y.

Mr. EPRANIAN. I will try and skip through this as fast as I can.

My testimony today will try to zero in on the direct impact of legislation such as this on the individual company at the plant level.

Skipping through, I will just say that ours is a very, very competitive industry, and for those reasons and the light manufacturing aspects of our production processes, historically we, like others in our business, have employed a high percentage of secondary wage earners in our work force, and not surprisingly, most are women. I would say our work force is approximately 70 percent women.

Therefore, we feel that this kind of legislation would have a very heavily disparate and disproportionate cost impact on us versus other types of business, and furthermore, we view our experience and circumstances as worthy of some authority on the subject.

In one of our plants where we currently provide minimum statutory medical disability benefits in New York State, we have estimated the cost to extend the same benefits for maternity would almost double our current premium, and this is after extensive marketing with a number of carriers, insurance carriers, many of whom won't even quote on the issue.

The resulting cost for the maternity addition alone is calculated at over $1,000 per employee claim based on our past one and a half years' maternity experience. That is 1976 and the first half of 1977. However, to obtain this kind of coverage, we would have to switch from our very competitive carrier to another carrier where our base costs for medical disability would be increased, which would increase the cost per claim to about $1,200.

This is only part of the story. The real cost is the hidden increase in claims incidence and additional time lost that would be the inevitable consequence, and I really want to emphasize this. To do this, I have compared two of our facilities, one where medical disability benefits are currently provided with a 26-week benefit, and another facility where no disability benefits are provided at all, and there are graphs that you will find attached.

The maternity leave policies are identical in both plants. In the plant where we have medical disability—I am sorry. In the plant where we do not have medical disability, the total absence for medical and maternity time lost is about 30 percent of all other time lost. In the plant where we do have disability benefits for medical alone—not maternity—it is 250 percent of all other absences. This is an average maternity absence of 12.7 weeks—that is all—under a very tightly controlled policy that follows EEOC guidelines to the letter.

I think the reason is very obvious. We can attribute it to no other cause than the monetary benefits for medical leave in one plan versus the other.

Now, with medical versus maternity running at approximately a 2-to-1 ratio, we have projected the adverse impact on the plan of extending disability benefits for maternity in the plan where we have disability for medical now. We estimate the total effect would be a startling 50-percent increase in total lost time, and I would have to

show you how that works out, but it compounds itself rather astronomically, and the total amount then would rise to an astronomical 350 percent of all other time lost. It is already 250 percent, and that is factual, and it is illustrated by a graph.

Now, if you compound that into the cost because of additional time lost, the compounded liability jumps to about $2,000 per claim. Now, in a company where our annual base earnings is about $8,000 a year in the production work force, where 95 percent of the maternity cases occur, the cross-motivation is pretty easy to see.

I might add, this is verging on the kind of statistics quoted in the medical and health benefits field, where we all know there have been runaway costs.

Now, by our closest estimate, this translates to a cost of close to $100 per employee, all employees, per year, across the board, which is equal to our present cost for our corporatewide pension plan, and this would be for just providing maternity benefits, disability maternity benefits.

There is a second aspect that I think needs to be stressed, and that is the area of controls, which very few people emphasize or even give much attention to, and why this increase will occur. It is simply human nature.

In the medical disability area, this has been done, obviously, by physicians, qualified expert medical opinion. I have already demonstrated that this is not an effective control in the medical area alone. Traditionally, physicians rely on what their patients tell them. It is presumed that the patient is ill and wants to be cured and get back to work as fast as possible for income resumption.

In other words, the doctor's diagnosis and treatment is largely based and founded on information provided by the patient. This is particularly true in minor medical situations. This would be fine out of the industrial medicine arena, but when it comes to patients having a vested interest in being certified to be disabled, or to be out longer than necessary because the monetary motivation is not much different than going to work, it is rather easy to envision the abuses and extra time lost that can occur.

The employer's ability to challenge and dispute this is extremely difficult, because it requires another physician's opinion, which is based on no better data than the first physician's opinion. The true crux of the problem is the employee's cross-motivation. So, in fact, no matter what the control effort or method employed, once monetary benefits are attached to any disability benefit, the incidence of claims and time loss invariably rises, and rather substantially, and after 20 years in the field, and I think with rather extensive personal and statistical experience in this area, I am absolutely convinced without a shadow of a doubt that there could be no other result.

The part that I think most employers object to mostly about this type of legislation is its mandatory nature. Our employees, again mostly female, and their unions, who have female leadership, to the best of my knowledge, in our 26-year union history, have never pressed for improvements in this area over other benefit advances.

We were prepared to grant these benefits in this last round of renewal negotiations in plans where we do not provide medical disability benefits. The unions didn't even ask for them. They wanted other things instead.

We really reject the proposition that legislative wisdom should supplant the collective bargaining process that is world admired and is the inherent right of management and labor, to self-determine their selection of economically responsible advances in the area of benefits.

Thank you for your interest and attention.

Mr. HAWKINS. Thank you, Mr. Epranian.

Mr. Thompson, in discussing the various plans that you had within the industry, may I ask you what type of disabilities are presently covered in your disability plans?

Mr. THOMPSON. Medical disabilities would be for a broken leg, a broken arm, operation internally. A typical plan might, for example, provide accident and sickness benefits, 50 percent of a person's average weekly wage, or a minimum of x dollars a week.

Mr. HAWKINS. Are there any disabilities that are strictly unique to men as opposed to women covered in any of the plans?

Mr. THOMPSON. Not that I know of.

Mr. HAWKINS. Would a vasectomy be covered or any prostate gland disabilities?

Mr. THOMPSON. We haven't had any experience in my own company about a vasectomy being covered; however, I would think that if a person had prostate difficulties, it may have been covered.

Mr. HAWKINS. Are they mentioned in the plan, whether there has been any experience with them? Would you say that they are covered or not?

Mr. THOMPSON. I think that they would be covered along the same lines that a hysterectomy would be covered, but I would stand corrected on that, if it is to the contrary.

Mr. HAWKINS. Well, you are not sure, then, whether they are covered or not, but you assume that they would be covered?

Mr. THOMPSON. That is right.

Mr. HAWKINS. What period of disability have you used in estimating the costs that you indicated in the statement?

Mr. THOMPSON. The costs to my company are predicated on extending this disability benefit for a 20-week period to be the same as the 20-week period that is provided for other disabilities.

Mr. HAWKINS. So you are using a 20-week period as the basis for the cost estimates?

Mr. THOMPSON. Yes; which in my case was $273,000.

Mr. HAWKINS. Mr. Connell, in your statement, you made reference to a figure of 26 weeks on page 1. In what way does the proposal pending mandate a 26-week period? Or are you simply assuming that that would be the result, rather than indicating, as the statement seems to, that this is written in the proposal?

Mr. CONNELL. No; I don't mean it is written in, but I mean that it has the possibility of happening. In other words, as I understand, it would make the accident and sickness benefit for pregnancies the same length or possibility as it would for a broken leg.

In other words, it could go up to 26 weeks.

Mr. HAWKINS. The cost you estimate, then, is based on the assumption that 26 weeks would be the experience under the bill. We have had rather overwhelming testimony that 8 weeks or a much shorter period is the experience. On what do you base the 26 weeks? It seems to be an unusually long time even for maternity cases, doesn't it?

Mr. CONNELL. No; I don't think so. Our experience has indicated that many women will take 26 weeks or maybe a year if permitted.

Mr. HAWKINS. Are you aware that this is strictly a medical benefit and not time out or leave?

Mr. CONNELL. Is this strictly a medical bill?

Mr. HAWKINS. Yes.

Mr. CONNELL. No.

Mr. HAWKINS. That is the full thrust of it.

Mr. CONNELL. I didn't realize that.

Mr. HAWKINS. I think there is much about the bill that many don't realize, but that is the purpose of the hearing, to try to bring these things out.

Mr. Thompson, I think you wanted to add something.

Mr. THOMPSON. I might say in response to your question concerning how the costs are predicated, just to provide the pregnancy situation or pregnant females the possibility of being out 26 weeks, that premium would cost x dollars. We are not assuming that they would be out 26 weeks, but the possibility they would be out 26 weeks would cost, as I noted in the case of my company, $273,000.

Now, they might stay out only 6 weeks or 8 weeks or 26 weeks, and again, this is a medical question, depending upon how the person feels and what their doctor thinks of their situation. It is going to vary, but the premium, considering those variables, will still be x dollars.

Mr. HAWKINS. Do you think that is actuarily sound, to make such guesses when all of the testimony from those who are connected scientifically with determining from an actuarial point of view indicates otherwise?

Mr. THOMPSON. I really can't comment on the soundness of it, not being experienced in that area. However, I have to rely on what my carrier says to me that it will cost me.

Mr. HAWKINS. Thank you.

Mr. Sarasin?

Mr. SARASIN. Thank you, Mr. Chairman.

Mr. Thompson, the figures you are quoting, are those given to you by the carrier, right?

Mr. THOMPSON. Yes, sir.

Mr. SARASIN. Obviously, you are correct, I think, in your earlier statement when you talk about the possibility of coverage of certain male disorders which are comparable to disorders that may only happen to females. Do your medical plans that you are involved with pay for medical expenses of abortion?

Mr. THOMPSON. Yes; in some cases they do. I am trying to think about all the companies, but our company's plan pays a certain percentage of the cost of an abortion, such as we also pay a certain percentage of the costs associated with pregnancies.

Mr. SARASIN. As a medical benefit?

Mr. THOMPSON. As a medical benefit.

Mr. SARASIN. Would they be paid if it was an elective abortion as well as those medically recommended?

Mr. THOMPSON. I believe so.

Mr. SARASIN. But what about a disability payment, a wage replacement benefit?

Mr. THOMPSON. No disability for that.

Mr. SARASIN. Do the other panelists have similar experience?

Mr. EPRANIAN. Yes; our medical is the same for maternity as everything else. I think a comment is worthy about the duration. I think most of the companies in our industry under affirmative action regulations and as such EEOC guidelines have determined what normal pregnancy absence is allowed. It is generally looked at as about a 12-week period, and it is based strictly on medical inability or ability to work.

Our experience over a year and a half with a very closely controlled policy in that regard has come out to 12.7 weeks. However, we believe strongly that that will be—with monetary benefits attached, will be greatly extended, as we have seen in the same incidence with medical. I am not considering the abnormals.

Mr. SARASIN. I think we may often be thinking of a disability period as the period after childbirth, when in fact that disability period is more likely to be the period prior to childbirth.

Mr. EPRANIAN. EEOC has devided pregnancy into three periods: Childbearing, child delivery, and child rearing. The only period that you are liable for for leave is the child delivery period, which is viewed at approximately a 6-week before and 6-week after period for normal. Doctors generally release their patients somewhere in the neighborhood of 8 to 4 weeks before delivery, expected date of delivery, and usually set the date of check-up 6 weeks following delivery, and our experience has shown that to be very accurate, 12.7 weeks.

Now, that is without any monetary benefits. Some women will work up to 2 weeks before or 1½ weeks before. We have an occasional abnormal which will have to leave early for medical—legitimate medical inability to work. We do not cover child rearing.

Mr. SARASIN. Do any of the panelists plans—It was pointed out, I think, Mr. Thompson's testimony that there would certainly be a required waiting period for any insurance for disability. Do any of the plans provide for pregnancy benefits, medical benefits in less than 9 months after being hired?

Mr. EPRANIAN. No; ours do not.

Mr. CONNELL. Ours do not.

Mr. EPRANIAN. There is a 270-day waiting period.

Mr. SARASIN. As I read the bill, it would be instant application of the legislation here, which would be not only for medical benefits for disability benefits, so the law requires you not to discriminate against pregnant women, I assume, would require you to hire the 8-month pregnant woman just in time for her to catch relief.

Mr. EPRANIAN. Especially if you are an affirmative action company and can't deny the entry of female applicants.

Mr. SARASIN. It is a Catch-22 situation.

Mr. THOMPSON. On the same subject, our plan—and I can't speak for Magnavox or AVX, but our plan would provide coverage for pregnancy up to 9 months after the employee quit the company and became ineligible for coverage under the plan, so there is a 9-month waiting period at the front, but there is also a 9-month period of coverage at the end of the termination of employment.

Mr. SARASIN. Is that standard?

Mr. EPRANIAN. Very conventional, sir.

Mr. SARASIN. Thank you, Mr. Chairman. Thank you, gentlemen.

Mr. HAWKINS. This may be a good time to take a break, a 5-minute recess.

[A brief recess was taken.]

Mr. HAWKINS. The committee is reconvened. I think we were propounding questions to the witnesses with regard to our desire to get some additional information. Mr. Weiss, I think you are next.

Mr. WEISS. Thank you, Mr. Chairman.

I would like to go into really only one area. Mr. Epranian, in the course of your testimony, you referred to the fact that most of the female employees in your plant are—and I believe the term you used was—secondary wage earners. Would you expand on that? How do you define a secondary wage earner?

Mr. EPRANIAN. Historically, being a very competitive, low profit margin industry, the electronic business, as I understand, industry in general has attracted the second working partner in the home, which historically has been women. So, we have a very high percentage of women who work in our industry.

Mr. WEISS. But you don't mean to indicate by that definition that the secondary wage earner would be working for unnecessary family income or luxury of family income?

Mr. EPRANIAN. I didn't mean to imply anything, sir. I just made a statement of fact.

Mr. WEISS. But the implication of it is, and this is what I am stressing, that you have people in the family who have to work to allow that family to survive, that the female half of the partnership who works is in some sense less entitled to the full protection of benefits because in fact she is a secondary wage earner.

Mr. EPRANIAN. No, sir, there was no such implication intended or made. In the 38-year history of the company I work for, it has historically employed secondary wage earners. We are not a high paying industry. Now, that historically has been women, whether you take that as sexist or not, I don't know. If you want to go back 38 years, maybe it was. Maybe secondary wage earners today, some of them are men, but it has historically employed them, and as a result historically we have had a very high percentage of females in our work force population.

I make no implications whatsoever. It is just a statement of fact.

Mr. WEISS. I am trying to determine what the relevance of the statement of fact is to the legislation that we are discussing this morning.

Mr. EPRANIAN. Mention of the secondary wage earner is only an explanation of why we have such a high percentage of women historically. Now, it is a statement of fact. When we employ people and on their application they indicate that their spouse works somewhere else, or they are reentering the work force, or they are entering it for the first time, I consider them a secondary wage earner in the home. It is a fact. I can't help how you want to interpret it.

Mr. WEISS. Well, I could understand your using the phrase, second wage earner in the family, but secondary——

Mr. EPRANIAN. Second, then. All I am trying to explain is, we have a high percentage of women. Forget the other fact.

Mr. WEISS. That is what I am trying to do, is forget the other fact.

Mr. EPRANIAN. Please do.

Mr. WEISS. Because, again, if in fact you are saying that the secondary aspect does not make any difference at all as to what the benefits or entitlements are to be, then I don't know why it has gotten into the discussion.

So, you and I have now agreed that in fact the phrase, secondary wage earner, really has no relevance at all in the discussion at hand.

Mr. EPRANIAN. Just the fact that we have almost 70 percent women in our work force.

Mr. WEISS. All right, let's start from that, almost 70 percent women. You will agree, will you not, that most of those people—the vast percentage of them—are working not necessarily for the benefit of the company or for any other reason that anybody else works, but in order to provide a wage for living as necessary for the person or the family?

Mr. EPRANIAN. As long as they provide the services, their reason for working is irrelevant to us.

Mr WEISS. In the course of the testimony on this legislation we have had indications that over the course of recent years—not going back 38 years necessarily—there have been more and more women entering the labor force in this country, and more and more of them are entering because it is out of sheer necessity for the family's survival, economic survival.

Mr. EPRANIAN. I agree with you, more and more are entering the work force. For what reasons I do not consider myself expert enough to express an opinion.

Mr. WEISS. Well, I really don't feel any point in questioning any further. Thank you, Mr. Chairman.

Mr. HAWKINS. Thank you.

Mr. PURSELL. My questions were along a similar line. You were saying your job market was women around 65 to 70 percent. Why is that? Why have you done that historically?

Mr. EPRANIAN. I just got into a very difficult discussion where I made an attempt to explain it. I am afraid I parroted a phrase that has become sort of colloquial in the industry, secondary wage earner, which already exception has been taken to. I think it is a valid fact, but that is the best I can explain. It just has naturally attracted a lot of women historically in the history of the company and in the history of the industry.

Mr. PURSELL. What is your average wage scale pay?

Mr. EPRANIAN. Our production force, I would say, averages in the neighborhood of $8,000 a year in base annual earnings.

Mr. PURSELL. Mostly on an hourly wage scale, minimum wage or better?

Mr. EPRANIAN. It is $8,000 to $9,000 average.

Mr. PURSELL. What would one of your average collective bargaining contracts pay?

Mr. EPRANIAN. That is what I am talking about, basically, the production work force.

Mr. PURSELL. What would be your hourly pay scale, then?

Mr. EPRANIAN. Well, our average hourly rate runs in the neighborhood of close to $4.

Mr. PURSELL. Do you think if this act became mandatory there would be an effect on the job market for women? You outlined some excellent cost factors this morning and additional benefits that you would have to pay.

Mr. EPRANIAN. That is a very good question, sir. I don't think we can change our labor markets and the people we attract. I think it would be an unnecessary burden costwise on us, and I think it would be at cross-purposes with fulfilling certain EEO obligations in employing women for a lot of companies, because you would be asking them to assume a greater and greater cost burden when you employ a woman versus a man.

Mr. PURSELL. So you think historically you would continue to hire women in the future if this act did become law?

Mr. EPRANIAN. Let's put it this way. I think we would continue to attract and have a great many more female applicants than men. Our applicant flow is highly female.

Mr. PURSELL. Supposing that women were not available for the job and you had to hire men in your particular business, and you indicate your low profit margin. You really haven't gotten into discussion of your competition overseas, and I appreciate that actual fact in the testimony, but would the fact be that you would have in a male collective bargaining union which might tend to be more aggressive, you would have to pay a higher wage scale? Your advantage of hiring women to me seems that you can keep those costs down.

Mr. EPRANIAN. Yes; I think historically that is true, but I don't think your assumption that if even the leadership of our unions were to become more male populated, that it would automatically mean a stronger posture on their part and higher wage levels. They are very responsive, and historically have been, to the nature and condition of the business.

I give you, as an example, in the skilled trades area, we still—there aren't many trained female machinists running around, so in that particular area it is heavily male populated, mostly men, and our wage levels are definitely, I would say, 10 to 15 percent below the prevailing labor market for similar skills.

Mr. PURSELL. What has been your pattern of collective bargaining as far as progressive hardcore strikes in your company?

Anybody on the panel might speak to that.

Mr. THOMPSON. Well, our industry—my company is much like AVX. We are approximately 60 to 65 percent female, varying from year to year, and I think this has occurred more so not because of wage levels but because of light assembly work, which prior to recent and excellent change in philosophy women felt they were better acclimated to light assembly work. This is all culturally changing patterns.

Mr. PURSELL. But if they are secondarily employed from a family standpoint, they tend to be not aggressive in collective bargaining.

Mr. EPRANIAN. In our 27-year history, we have had a bitter strike in 1969 and another one in 1976—excuse me, 1973.

Mr. PURSELL. How many contracts do you have all together in the industry?

Mr. EPRANIAN. We have four. I don't know how many Fred has.

Mr. THOMPSON. We have four in my company. We did have a strike in 1970, and I might add that in our collective bargaining agreement,

at our corporate headquarters, we probably have—probably only 50 percent female in that group, and the leadership has been primarily male and female. It has been 50–50. The president happens to be a male, but officers of the union were female.

Mr. PURSELL. Is leadership in the various locals predominantly male or female?

Mr. EPRANIAN. Predominantly female in ours.

Mr. CONNELL. In our operation also, and they are very aggressive.

Mr. PURSELL. More towards safety conditions than benefits, retirement, and pension rather than wage scale?

Mr. CONNELL. Everything.

Mr. EPRANIAN. Everything.

Mr. THOMPSON. We have found in the last couple of years that people want money in their pocket, and a bit of a deemphasis on benefits, except for a pension plan. They push hard on pension plans, but not on disability.

Mr. EPRANIAN. I agree with that, because we have a work force that the old get older and the new turn over. As a result, there is a large percentage of the work force population that is greatly interested in pension benefits, a very strong emphasis there. Otherwise, it is money.

Mr. PURSELL. Thank you, Mr. Chairman.

Mr. HAWKINS. Mr. Le Fante?

Mr. LE FANTE. No questions.

Mr. HAWKINS. Thank you, gentlemen.

Mr. SARASIN. Mr. Chairman, if I may.

Mr. HAWKINS. Mr. Sarasin?

Mr. SARASIN. Gentlemen, have you had an opportunity to look at section 2 of H.R. 6075?

Mr. THOMPSON. Yes; if that is the section that would prohibit an employer from reducing a benefit.

Mr. SARASIN. What effect would that have?

Mr. EPRANIAN. It would be disastrous to us.

Mr. SARASIN. Would you elaborate on that?

Mr. EPRANIAN. You say withdraw a benefit. Maybe I ought to have that clarified. Can I presume we have an existing medical disability benefit that would be extended to maternity and we therefore could not reduce the level of benefits for maternity?

Mr. SARASIN. As I read the bill, you wouldn't be able to make any adjustment in any other provision or exclude any other type of disability in order to cover the cost. It would require the additional contributions, and you wouldn't be able to adjust them anywhere else.

Mr. EPRANIAN. According to my testimony, I think it is clear. Maternity only requires a 12- to 13-week benefit legitimately. Our recent experience shows that we have a 26-week medical benefit. We would have to afford 26 weeks of maternity, and I know for a fact that it would creep to 16, to 18 weeks. It would just happen.

Mr. SARASIN. Are there any operations within your company which do not provide them?

Mr. EPRANIAN. Yes; the one that does, which I used as a model, is in New York State. The one that does not is in South Carolina.

Mr. SARASIN. There are no benefits for being employed?

Mr. EPRANIAN. No disability benefits. My testimony was primarily on the disability benefits.

Mr. SARASIN. But at the present time you are not providing any disability benefits in that plan?

Mr. EPRANIAN. Not in South Carolina, no, and the maternity leave policies are identical in both situations.

Mr. SARASIN. What effect would this have, from your experience, on the smaller operations, small business, small electronics businesses?

Mr. EPRANIAN. Our plants that I have used as examples are not small enough that I think this would put us out of business, but I think it would be inordinately costly benefit operation proportionally. It wouldn't relate to any of it.

To have the cost for maternity disability to equal the cost for pensions, corporate-wide, I just can't see any benefit to it.

Mr. SARASIN. Thank you, gentlemen.

Thank you, Mr. Chairman.

Mr. HAWKINS. Thank you, gentlemen, for your testimony this morning. It has been most helpful to the committee, and we appreciate it.

The next witness is Dr. Dorothy Czarnecki, representing the American Citizens Concerned for Life, Philadelphia, Pa.

We have your testimony, Dr. Czarnecki, and it will be entered in the record in its entirety at this point, and if you could summarize from it, it would be appreciated.

[The prepared statement of Dorothy Czarnecki follows:]

TESTIMONY OF DOROTHY CZARNECKI, M.D.

Mr. Chairman and members of the subcommittee, I appear before you today to testify in behalf of American Citizens Concerned for Life, in support of H.R. 6075, legislation designed to assure economic equality for pregnant women.

ACCL is a national organization which promotes respect for human life in all its stages. It supports legislation that protects human life, it works to provide services for pregnant women and their families. We are concerned with the plight of the pregnant female in our society.

I am a practicing gynecologist in Philadelphia, Pa. My patients are from the middle and lower socioeconomic groups. Fifty percent of women appear in my office with some minor or major difficulties needing attention, but the other 50 percent are completely healthy, have a sound reproductive system, and merely present themselves annually because they have been told to practice preventive medicine. This means they get an annual checkup, have a breast exam, and pap smear. They have also been told that this is the best time to get questions about themselves answered, so they arrive with their questions about themselves and their fertility.

This scene is repeated in doctor's offices daily all across this nation. These women have a healthy attitude toward their sexuality. Some are desirous of pregnancy, other will take measures to prevent this. Whatever their choice they should should not be discriminated against because, as women, they have the capacity to become pregnant, whereas their male counterparts do not.

Members of the committee, the women of this nation can expect to have questions concerning their fertility for 35 to 40 years of their lives.

The Supreme Court's decision, that pregnancy discrimination is not sex discrimination, deemed, in my opinion, to be largely based on the fact that pregnancy is a voluntarily induced condition. It was stated in *Gilbert* that "expert testimony clearly establishes that pregnancy can be avoided through the use of contraceptive devices."

Let us examine the facts, printed as recently as 1977, in "Dialogues in Oral Contraception," Univ. of Southern Calif. School of Medicine, coordinated by Ronald A. Chez, M.D., F.A.C.O.G. "The most effective method we can offer her, the one with the least failure rate, is certainly the combination pill."

FAILURE RATE

	Theoretical	Actual use
Pill	0.1	0.7
IUD	1.9	2.8
Condom	2.6	17.0
Diaphragm	2.5	18.0
Withdrawal	16.0	23.0
Rhythm	14.0	40.0

Thus you see that even a woman with good intentions and the desire to avoid pregnancy may find herself with child while using the best contraceptive on the market. Our preventive measures in medicine fall short of our expectations. In these cases of failed contraception we need not resort to destructive measures, such as abortion, which have been offered as backup methods for avoiding pregnancy. These backup methods do not prevent or avoid pregnancy, they avoid delivery of an already growing human being.

Medical testimony for the *Gilbert* decision suggested use of the morning-after pill as a backup method for avoiding pregnancy. Theoretically, this should work like a charm, in practice, it leaves much to be desired. If put into common use at the recommended dosage the woman in question would be severely incapacitated with gastrointestinal side effects, would not be able to function at work, would lose as much time treating herself to prevent pregnancy as she would in pregnancy and delivery.

Pregnancy is a unique condition of life. It cannot be described as an illness and yet, it certainly can happen accidently. Thousands of pregnancies each year result from what are supposed to be our adequate contraceptive techniques. Medical and scientific advancements have not yet progressed to a point that a physician like myself is comfortable in assuring his patient or her patient that any of the contraceptive methods are 100 percent effective. Conversely, the human reproductive system is so complex, that even with the best of care, and all the modern medical knowledge at hand, couples have been planning to become parents for all of their reproductive lives, with no success. This idea of our reproductive system being totally under our control certainly needs re-examination.

Let us then put pregnancy into its proper perspective. Justice Rehnquist describes it as "significantly different from the typical covered disease or disability." It is not a disease at all. We must begin describing it as a condition different and separate from all those that we have known as illness. It is best described by Williams in his text "Obstetrics: 'Pregnancy from a biologic point of view represents the highest function of the female reproductive system and should be considered normal."

In today's society a working wife and mother is not new. Women work because there is a need to provide for themselves and their families. Over 40 percent of our work force is women. Senator Harrison A. Williams has stated, and we agree, that "the loss of a mother's salary will have a serious effect on the family unit * * * making it difficult for parents to provide their children with proper nutrition and health care. For some women and their families, it will mean dissipating family savings and security, or being forced to go on welfare. For others—especially low income women—the loss of income will encourage abortions."

Under ordinary circumstances women get through the nine months of pregnancy with little or no difficulty. Current obstetrical practice allows the pregnant female to continue in her chosen role until late in pregnancy. She is encouraged to remain active, exercise, and maintain good nutrition.

A recent guest editorial by Roy A. Pitkin, M.D., Professor of Obstetrics at the Univ. of Iowa, on Ob World provides us with the following information:

"In recent years, clinical observations of the effects of maternal diet on outcome of pregnancy have been complemented by basic research. Animal experiments concerning dietary restrictions and nutrition in pregnancy have been of particular interest."

1. In circumstances of general nutritional deprivation fewer animals become pregnant.

2. When nutritionally deprived animals did conceive, they had fewer animals per litter.

3. Individual babies were smaller
4. Nutritional deprivation appeared to be attended by an increase in mortality, for both the fetuses and the mother
5. There are often permanent, damaging effects, which could not be reversed

"Planned studies of nutritional deprivation in humans have not been carried out for obvious reasons. Studies of live babies augmented by autopsies of dead babies, in both affluent and impoverished societies, have provided evidence in some ways consistent with the thesis that effects of early nutritional deprivation in the human are similar to those seen in animals."

We have ample evidence today that the outcome of the pregnancy depends on family income.[1] As family income decreases, the risk of prematurity increases. "Malnutrition and Iron deficiency anemia are common problems in the United State, often associated with pregnancy, and contribute to prematurity and mental retardation in the infant. Inadequate intake of protein, vitamins and minerals during the pregnancy results in inadequate development of the fetus, particularly of the brain. There is ample protein to go around, but it is not adequately distributed to or consumed by pregnant women and young children who suffer most from malnutrition."[2]

Gentlemen, recall Senator Williams' words, "the effect of the Supreme Court's decision on working women and their families could be devasting." Medical evidence presented by doctors in the *Gilbert* case revealed that 90 percent of all childbearing women are disabled for six weeks or less by pregnancy and childbirth. Medical evidence presented today reveals that the safety and effectiveness of all existing contraceptive methods are still unresolved. A woman, if not protected by the best contraceptive that we have to offer should not be cœrced into a 'back-up' method of destructive obstetrics (abortion), but should be supported and treated the same as any other temporary disability for all job related purposes. I urge you to support H.R. 6075.

STATEMENT OF DR. DOROTHY CZARNECKI, REPRESENTING THE AMERICAN CITIZENS CONCERNED FOR LIFE, PHILADELPHIA, PA.

Dr. CZARNECKI. Thank you, Mr. Chairman and members of the subcommittee.

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This scene is repeated in doctors' offices daily all across this nation. These women have a healthy attitude toward their sexuality. Some are desirous of pregnancy. Others will take measures to prevent this.

[1] Kennedy Institute-Georgetown University Study (Contract 30131-G-74-02 OEO) 1974.
[2] Bartram, John B., M.D., "Prevention of Mental Retardation," The Challenge, The Commonwealth of Penna. Dept. of Public Welfare, Harrisbug, Pa., May-June 1974.

Whatever their choice, they should not be discriminated against because, as women, they have the capacity to become pregnant, whereas their male counterparts do not.

Members of the committee, the women of this nation can expect to have questions concerning their fertility for 35 to 40 years of their lives.

The Supreme Court's decision, that pregnancy discrimination is not sex discrimination, seemed, in my opinion, to be largely based on the fact that pregnancy is a voluntary induced condition. It was stated in Gilbert that "expert testimony clearly establishes that pregnancy can be avoided through the use of contraceptive devices," while the facts printed recently in "Dialogues in Oral Contraception" at the University of California with Dr. Ronald Chez mentioned that the most effective method we can offer, or the one with the least failure rate, is certainly the combination pill, and as you will see, the failure rate theoretically for the pill is 0.1 percent, but as we use it daily, in actual use its failure rate is 0.7 percent.

As recorded, the IUD theoretically is 1.9 percent effective, and in actual use it is 2.8 percent effective. The others are mentioned, the condom, diaphram, et cetera.

Thus, you see that even a woman with good intentions and the desire to avoid pregnancy may find herself with child while using the best contraceptive we have to offer. Our preventive measures in medicine fall short of our expectations.

In these cases of failed contraception, we need not resort to destructive measures, such as abortion, which have been offered as backup methods for avoiding pregnancy. These backup methods do not prevent or avoid pregnancy. They avoid delivery of an already growing human being. Medical testimony for the *Gilbert* decision suggested use of the morning-after pill as a backup method for avoiding pregnancy. Theoretically, this should work like a charm; in practice, it leaves much to be desired. If put into common use at the recommended dosage the woman in question would be severely incapacitated with gastrointestinal side effects, would not be able to function at work, would lose as much time treating herself to prevent pregnancy as she would in pregnancy and delivery.

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Let us then put pregnancy into its proper perspective. Justice Rehnquist describes it as "significantly different from the typical covered disease or disability." It is not a disease at all. We must begin describing it as a condition different and separate from all those that we have

known as illness. It is best described by Williams in his text, Obstetrics: "Pregnancy from a biologic point of view represents the highest function of the female reproductive system and should be considered normal."

In today's society a working wife and mother is not new. Women work because there is a need to provide for themselves and their families. Over 40 percent of our work force is women.

Senator Harrison A. Williams has stated, and we agree, that:

> The loss of a mother's salary will have a serious effect on the family unit • • • making it difficult for parents to provide their children with proper nutrition and health care. For some women and their families, it will mean dissipating family savings and security, or being forced to go on welfare. For others—especially low income women—the loss of income will encourage abortions.

Under ordinary circumstances women get through the 9 months of pregnancy with little or no difficulty. Current obstetrical practice allows the pregnant female to continue in her chosen role until late in pregnancy. She is encouraged to remain active, exercise, and maintain good nutrition.

A recent guest editorial by Roy A. Pitkin, M.D., professor of obstetrics at the University of Iowa, in OB World, provides us with the following information.

> In recent years, clinical observaions of the effects of maternal diet on outcome of pregnancy have been complemented by basic research. Animal experiments concerning dietary restrictions and nutrition in pregnancy have been of particular interest.

First, in circumstances of general nutritional deprivation, fewer animals became pregnant. Second, when nutritionally deprived animals did conceive, they had fewer animals per litter. Third, individual babies were smaller. Fourth, nutritional deprivation appeared to be attended by an increase in mortality, for both the fetuses and the mother. Fifth, there are often permanent damaging effects which could not be reversed, and this meant reversed later in pregnancy or after delivery.

Dr. Pitkin goes on to state that:

> Planned studies of nutritional deprivation in humans have not been carried out for obvious reasons. Studies of live babies, augmented by autopsies of dead babies, in both affluent and impoverished societies, have provided evidence in some ways consistent with the thesis that effects of early nutritional deprivation in the human are similar to those seen in animals.

We have ample evidence today that the outcome of the pregnancy depends on family income. As family income decreases, the risk of prematurity increases.

> Malnutrition and iron deficiency anemia are common problems in the United States, often associated with pregnancy, and contribute to prematurity and mental retardation in the infant. Inadequate intake of protein, vitamins, and minerals during the pregnancy results in inadequate development of the fetus, particularly of the brain. There is ample protein to go around, but it is not adequately distributed to or consumed by pregnant women and young children who suffer most from malnutrition.

Recalling Senator Harrison Williams' words, "the effect of the Supreme Court's decision on working women and their families could be devastating," medical evidence presented by doctors in the Gilbert case revealed that 90 percent of all childbearing women are disabled

for 6 weeks or less by pregnancy and childbirth. Medical evidence presented today reveals that the safety and effectiveness of all existing contraceptive methods are still unresolved.

A woman, if not protected by the best contraceptive that we have to offer, should not be coerced into a backup method of destructive obstetrics, such as abortion, and should be supported and treated the same as any other temporary disability for job-related purposes.

Mr. WEISS [presiding]. Thank you very much, Dr. Czarnecki. Let me just indicate for the record, I think inadvertently on page 3 of your statement, in the line which reads, "As family income," I think you meant to say decreases. You said increases, and I will have the record corrected to indicate that.

Let me ask you two sides of a question. First, do you feel that in the absence of this legislation, pregnant workers will be more likely to terminate pregnancies?

Dr. CZARNECKI. Yes, I do, sir.

Mr. WEISS. And the other side of it: Do you believe that this legislation that we have before us encourages abortion?

Dr. CZARNECKI. Would you repeat your question, please?

Mr. WEISS. Do you believe this legislation we are proposing increases the likelihood of abortion?

Dr. CZARNECKI. This legislation would save babies, in my opinion. It would encourage a woman to keep a pregnancy or do what she wants. It gives a woman a choice.

Mr. WEISS. In the event a female employee decides to abort a pregnancy, do you think that that employee should be denied medical coverage and disability benefits for complications resulting from the medical procedure?

Dr. CZARNECKI. No; I feel we should treat this as a condition, period.

Mr. WEISS. I think that you have already indicated in referring to the testimony in the *Gilbert* case, but we ought to get on record your own belief as to the average length of time which a woman is unable to work due to pregnancy and childbirth. Would you concur with the testimony of *Gilbert*?

Dr. CZARNECKI. Yes, sir, 6 weeks or less in most instances.

Mr. WEISS. Finally, on page 2 of your statement, you refer to the morning-after pill for avoiding pregnancy. You state that women using this method can be severely incapacitated with gastrointestinal side effects and probably could not function at work. Are we to assume from this statement that such a woman using this method could be covered under a disability plan while in fact a pregnant woman would not?

Dr. CZARNECKI. I would think they would be. We have no way of knowing. A woman given a medication such as a pill takes the medication not morning after. The amount of medication given we give for 3 to 5 days, because the human body cannot tolerate the medication. I don't know that we would even consider that she would. She wouldn't give anybody any indication that she was pregnant and taking medication. She would be ordinarily treated. It would probably be covered.

Mr. WEISS. Right. Thank you very much.

Mr. Sarasin?

Mr. SARASIN. Thank you, Mr. Chairman.

Doctor, I want to be sure I understand the change that was just made on page 3.

Mr. WEISS. It should read, as it reads, "As family income decreases, the risk of prematurity increases." I think inadvertently she had said that as family income increases.

Mr. SARASIN. I missed that when you made that statement, Doctor. I thought we somehow were changing the word "decreases."

Dr. CZARNECKI. No, as it is on here.

Mr. SARASIN. As I understand the answers to Mr. Weiss' questions, what you suggested is that an abortion should be equally covered under this proposal.

Dr. CZARNECKI. I think a woman should be given her choice. This bill is good because it encourages people to remain pregnant rather than coerces them to abortion, but this would be a woman's feelings. It is a matter of a woman's choice that we would be allowing.

Mr. SARASIN. But it requires the employer then to pay for the abortion.

Dr. CZARNECKI. Whoever was covering this.

Mr. SARASIN. Well, it is the employer. Is there a standard disability period for abortion?

Dr. CZARNECKI. I don't believe so. Abortions are handled as DNC's, minor procedures, 2 to 4 weeks ordinarily. In my medical experience, this is ordinarily what the female would be out with, 2 to 4 weeks.

Mr. SARASIN. When you talk about this 6-week period, what period are we really talking about?

Dr. CZARNECKI. Most women will need 2 to 4 weeks at delivery and after delivery. Many women need 1 or 2 weeks for some transient minor problem during pregnancy. Many do not, but the 6 weeks takes into consideration during pregnancy at the time of delivery and after delivery. Many women need far less than this.

There are women who go through up until delivery with very few complaints. Most women do, a week or two.

Mr. SARASIN. In your experience, are they really working until that time?

Dr. CZARNECKI. Yes, sir, they are. They work. If they have a problem, they take a day off, just as under ordinary circumstances anybody would. I don't consider a woman pregnant any different than one who is not, and her disabilities, her ailments would be just to me as though she were not pregnant. They really are not that different.

Mr. SARASIN. But you would find no problem in suggesting to the woman that she work until almost the moment of delivery?

Dr. CZARNECKI. Absolutely not, and mentally this is sound, physically it is sound medicine.

Mr. SARASIN. In addition to your feeling here, this is your experience and practice?

Dr. CZARNECKI. Yes, sir.

Mr. SARASIN. That 6 weeks is enough to cover the short period of time before delivery, and delivery, and postdelivery?

Dr. CZARNECKI. Yes, sir.

Mr. SARASIN. Would you feel that it would be proper to provide, if we were to go this route, disability payments, I guess, is really the question. Not so much medical benefits, but disability payment. If we were to say that it would be for a 6-week period, and then if that was to be extended by proof to allow them to extend it——

Dr. CZARNECKI. This is what we do generally. People need excuses. They need proof of illness, et cetera, in a general way, without pregnancy. I don't see why we should treat it any differently if a woman were pregnant.

Mr. SARASIN. Well, many plans now provide for 6 weeks' disability payment. Some do. Maybe we shouldn't say many, because I don't think it is the majority, but at the same time, that disability plan may provide 26 weeks of disability payments or stated in the plan for any other type of disease.

Do you feel that it would be proper to put in this legislation that we would provide for 6 weeks of benefits?

Dr. CZARNECKI. I really think it is an individual thing with the companies, just that they should make provision to cover for pregnancy, and they would determine how much. Six weeks is an adequate time. It is a decent amount. Whether or not it should be in there, I don't know.

Mr. SARASIN. But the legislation does not allow that. It says, you will provide whatever—a 26-week disability period. That is what you are going to have available for the pregnant woman.

Dr. CZARNECKI. There would be no more needed.

Mr. SARASIN. Well, my concern, though, is that we are talking about a wage replacement scheme, and a situation really unlike most illnesses, where an individual is encouraged to get back to work as quickly as possible, simply to increase the wages. Here we are looking at a situation where we know that many women don't come back to work after childbirth, and certainly don't intend to for a year or two, and yet we would be providing a wage replacement during that period.

I am concerned about the encouragement for the individual to try and get as much out of that as possible. I think unfortunately we have seen in every wage replacement program an incentive to delay even for ordinary illness. Another committee on which I serve is holding hearings on the Federal Employees Compensation Act. They made some changes in 1974 to provide for a 45-day continuation of pay without any showing of illness.

That has led to an automatic 45-day matter of right to be disabled. That was not what we had in mind.

So, my feeling again is, would we be better off saying that we will require a 6-week period and then beyond that a greater showing or a continued showing for some kind of an exception? My point again is, should we write in 6 weeks?

Dr. CZARNECKI. My only opinion is, pregnant women delivering, they want to get back to work. They want to get back. They have a certain period of time off, 2 to 4 weeks, and they desire to go back. So, I really don't know. It would be good. I can't offer any more.

Mr. SARASIN. Of course, in many places wages are not being supplemented or replaced, so there is an incentive to go back if the individual truly intends to go back, but in your testimony, 40 to 60 percent

of the women don't want to go back, are not going to go back. They want to let that child grow up a little bit.

I just wonder if we are creating a situation in the name of a noble thought that is going to give us a very serious problem in a short period of time, because of the cost factor that is included.

Doctor, thank you very much for your testimony.

Thank you, Mr. Chairman.

Mr. WEISS. Thank you, Mr. Sarasin.

Mr. Le Fante?

Mr. LE FANTE. Thank you, Mr. Chairman.

Doctor, am I correct in assuming that you and the organization you represent favor this legislation primarily because you think it would prevent women who must work from having to make the decision to terminate their pregnancy to continue working?

Dr. CZARNECKI. Yes, I think in many instances it will do just that.

Mr. LE FANTE. All right. Now, with regard to the bill's chances of passing and eventually becoming law, what are your views regarding the possibility of an amendment to the legislation which would exclude nontherapeutic abortions from the definition of "pregnancy" and "related medical conditions?"

Dr. CZARNECKI. As I mentioned just a few minutes ago, I think that we ought to consider pregnancy—in a sense, we ought to consider that a condition that the woman should be permitted to do with, have the baby or whatever she has decided to do. I mean, if you want to amend something, it may dilute the bill, but I think the bill itself we are for, and one way or the other, I think we can work with it, the organization. We want the bill passed. We think it is good. Whether an amendment or two is added, we can accept that.

Mr. LE FANTE. Your group, the American Citizens Concerned for Life, has been very active for years. It has not just been formed overnight. I have had some direct experience with them through the years in the New Jersey State Legislature.

Dr. CZARNECKI. Well, we realize the coalition is supporting this. There are diverse views, et cetera, but basically speaking, the bill is a sound bill. We think it would save lives, and it would do what we want. Women have to have a choice to maintain a pregnancy if she so desires rather than being coerced into having an abortion.

So, indirectly, it is a prolife type of situation which we can accept.

Mr. LE FANTE. Do you think if such an amendment were to be considered with regard to the definition of pregnancy, that is, to exclude nontherapeutic abortions, that that would dilute the bill?

Dr. CZARNECKI. Possibly.

Mr. LE FANTE. In your opinion, and again, maybe this is not a fair question, but I assume your organization has been lobbying on this issue through the years, do you think it would lose support for the bill?

Dr. CZARNECKI. In my own opinion, it might, but I have no way to say.

Mr. LE FANTE. That is all I have, Mr. Chairman. Thank you, Doctor.

Mr. WEISS. Mr. Pursell?

Mr. PURSELL. No questions.

Mr. WEISS. Thank you, Dr. Czarnecki. Thank you very much for taking the time to appear before us to provide us with your expertise in this area.

Our last witness this morning is Mr. James Ware, assistant commissioner for income security, Department of Labor and Industry, Trenton, N.J.

While Mr. Ware is coming forward, may I just indicate to the committee that we have a meeting of this subcommittee scheduled for 2 o'clock this afternoon in this room for the markup of the age discrimination amendments?

Mr. Ware, please. Your statement will be placed in the record at this point.

[The prepared statement of James Ware follows:]

STATEMENT OF JAMES A. WARE

Subcommittee chairman and members: My name is James A. Ware. I am Assistant Commissioner of the New Jersey Department of Labor and Industry, representing John J. Horn, Acting Commissioner.

I would like to express my appreciation to the members of this subcommittee, and especially to Chairman Hawkins, for the opportunity to explain the New Jersey Temporary Disability Benefits program which offers wage protection to workers unable to work because of non-work connected disabilities and, in particular, its enlightened treatment of pregnant claimants. This state law serves to prohibit sex discrimination on the basis of pregnancy, childbirth, or related medical conditions.

New Jersey has a unique tripartite disability insurance program which protects practically all workers who are covered by the State's unemployment compensation law. The State plan includes all employed workers except those whose employers have exercised their option to establish private plans. Such employers provide their own insurance. Private plans require approval by the Division of Unemployment and Disability Insurance. Approval is granted only if these plans are no more restrictive in eligibility requirements than the State plan, provide benefits at least equal to the State plan in amount and duration and do not select risks adverse to the State plan. Roughly, 2½ million workers are in the State plan and three-fourths of a million are in private plan.

Disabled unemployed workers—those who have not been in employment for two weeks or longer—receive benefits under the disability during unemployment program.

No disability benefits are charged against the State's unemployment insurance fund. The State Disability Benefits Fund, established in 1948, with $50 million in worker contributions withdrawn from the Unemployment Trust Fund, is maintained by depositing into it State plan employer and worker contributions, interest and earnings on investments, and fines, penalties and assessments collected under provisions of the temporary disability benefits law. All State plan benefits are paid from this Fund. A small percentage is allocated to administrative costs. Currently, the balance in the Fund is approximately $70 million. Worker contributions are one-half of 1 percent of the first $5,800 of earnings in the calendar year. The present employer tax against the $5,800 limit for each employee can vary from 0.2 percent to 0.75 percent.

New Jersey treats pregnancy as a compensable disability, but limits benefits for regular pregnancies to the four weeks immediately before and the four weeks immediately after the termination of pregnancy. As a result of Formal Opinion No. 1–1975, issued by the New Jersey Attorney General in January of 1975, claims based on medical complications of pregnancy are payable as for any other claims for disability; that is, they may be payable for as many as 26 weeks. This ruling applies not only to State plan but also to private plan and disability during unemployment claims.

I thought you would be interested in some statistics I have which can give a more graphic picture of the scope and features of our program.

RELEVANT STATISTICS (FISCAL YEAR BASIS)

	Disability during—		
	State plan	Unemployment	Private plans
Benefits paid, all claims (millions):			
1974	$68.5	$10.9	$40
1975	69.5	11.7	75
1976	70.1	14.9	75
Number of all claims:			
1974	110,563	19,096	[1]225,000
1975	103,312	19,234	[1]230,000
1976	100,074	23,721	[1]220,000
Pregnancy claims:			
1974	8,056	9,925	NA
1975	7,683	8,233	NA
1976	5,944	11,825	NA
Pregnancy benefits paid (millions):			
1974	$3.6	$4.9	NA
1975	3.7	4.9	NA
1976	3.3	7.3	NA
Average duration, all claims (weeks):			
1974	8.9	8.6	NA
1975	9.1	8.5	NA
1976	8.8	7.1	NA
Average duration, pregnancy claims (weeks):			
1974	7.1	7.6	NA
1975	7.1	8.6	NA
1976	7.3	8.6	NA
Average weekly benefits all claims:			
1974	$70	$67	NA
1975	74	72	NA
1976	79	88	NA
Average weekly benefits per pregnancy claim:			
1974	$64	$65	NA
1975	68	69	NA
1976	76	72	NA

[1] Approximate.

STATEMENT OF JAMES A. WARE, ASSISTANT COMMISSIONER FOR INCOME SECURITY, DEPARTMENT OF LABOR AND INDUSTRY, TRENTON, N.J.

Mr. WARE. My name is James A. Ware. I am assistant commissioner of the New Jersey Department of Labor and Industry, representing John J. Horn, acting commissioner.

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duration, and do not select risks adverse to the State plan. Roughly, 2.5 million workers are in the State plan and 0.75 million are in private plans.

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I thought you would be interested in some statistics I have which can give a more graphic picture of the scope and features of our program. The benefits paid out to all claims in 1976 were $70.1 million. Going down to the number of claims, and this is in the State plan, the number of claims the same year, 1976, was 100,074.

Pregnancy claims amounted to $5,944. Benefits paid for pregnancy claims, in 1976, $3.3 million. The average duration of all claims, all disability claims, in 1976 was 8.8 weeks. The average duration of pregnancy claims, 7.3 weeks.

The average weekly benefit rate for all claims in 1976 was $79, and the average weekly benefit rate for pregnancy claims in the same year was $76.

This concludes my formal presentation, but I would like to add that New Jersey has been in the business of disability insurance since 1948, and we recognize the need that the nature of our labor force requires that we consider the fact of pregnancy of our workers, of our female workers, as a condition of employment, and we try to maintain the stability of our labor force by ensuring that they retain their relationship by providing disability benefits during this 8-week period.

Mr. WEISS. Mr. Ware, thank you very much.

How long have you had pregnancy compensatory disability?

Mr. WARE. Since 1948.

Mr. WEISS. Pregnancy itself since 1948?

Mr. WARE. Yes; that's right.

Mr. WEISS. And are you aware of what industry's general reaction is to that phase of the disability program?

Mr. WARE. Yes; this program has been generally accepted by industry in New Jersey. Challenges to the State law have never been in this area of pregnancy. So, as I said before, most of the plans are State plans, which means we operate them under the State administration, but they also have private plans, and these plans are better or stronger than the State plan.

So, industry in New Jersey has not seen pregnancy as a problem area.

Mr. WEISS. Thank you very much.

Mr. Sarasin?

Mr. SARASIN. Thank you, Mr. Chairman.

Mr. Ware, thank you for your testimony. You point out that those who have not been in employment for 2 weeks or longer—does that mean you must work 2 weeks before you are eligible?

Mr. WARE. Well, what happens—yes, that is what it really means. We have a program unique to New Jersey that in order to qualify for unemployment insurance you have to be able and available for work, as you know, but in this instance they are disabled and they are really not covered under unemployment insurance. They automatically go into the other program after they have been working for 2 weeks but they wouldn't qualify. That is what that program is about.

Mr. SARASIN. Now I am confused. I think I have gotten myself confused. The employee, the individual is eligible for the benefits you described, and then you say disabled unemployed workers, those who have not been in employment for 2 weeks or longer, receive benefits under the disability during unemployment programs.

So, if you have an individual who has been out of work for 2 months and becomes disabled, he is eligible under this disability program?

Mr. WARE. No. Congressman, what this means—maybe I can simplify it for you. What it means is, in order to participate in the program, you have to qualify under the laws of the unemployment insurance, which says in New Jersey you have to be working for 20 weeks, and earn $2,200. Now that you are qualified for it, you are getting unemployment checks, you are out of work, but all of a sudden become disabled.

So, at that period you transfer over to the other program.

Mr. SARASIN. Let me ask you, assume you have two industries, both under the State plan, and an individual who leaves one and goes to the other, gets out Friday, goes in on Monday. Is he subject to any kind of delay period before he is eligible for benefits, assuming he has gotten the 20 weeks before?

Mr. WARE. No.

Mr. SARASIN. Coverage is transferable?

Mr. WARE. It covers all employees. Everyone in New Jersey is covered. It's a State plan or private funds requirement.

Mr. SARASIN. Now, granting pregnancy benefits, is there a limitation of time before a person is eligible for pregnancy disability benefits?

Mr. WARE. No; as long as he meets the requirements of the law, the same type of requirements, they become eligible under the plan.

Mr. SARASIN. So that an individual can become eligible in 20 weeks?

Mr. WARE. That's right. That's right, 20 weeks is New Jersey's requirement, or $2,200 in earnings. As long as they meet the eligibility requirements of the unemployment compensation law, they are automatically covered under the system, or the same law in New Jersey for unemployment and disability insurance.

Mr. SARASIN. Assume you have an individual who is starting employment, has no work history. Is there any kind of a time period before the coverage applies?

Mr. WARE. If he doesn't have the work history, he has to work up until he meets the required——

Mr. SARASIN. Twenty weeks or $2,200?

Mr. WARE. Under the disability law—let me correct myself. Under the disability law we had a change. Current disability is only 17 weeks, so if he had 17 weeks, he would qualify.

Mr. SARASIN. Seventeen weeks to qualify for it?

Mr. WARE. That is right.

Mr. SARASIN. So does that mean the individual who was starting employment and goes to work in his first job and becomes disabled after working 10 weeks——

Mr. WARE. He would not be covered.

Mr. SARASIN. So there is a time period for everyone?

Mr. WARE. That's right.

Mr. SARASIN. Somebody talked about a 2-week period before.

Mr. WARE. I think that transition is in New Jersey what we call a biweekly reporting statement. In other words, we pay every 2 weeks, and that allows us to transfer over from one account to another. That is all.

Mr. SARASIN. It has been said that some plans would require a 9-month waiting period before benefits are paid under a pregnancy plan. All you would require is the 7-week period?

Mr. WARE. That's right, a qualifying period.

Mr. SARASIN. Now, you pay benefits for 8 weeks?

Mr. WARE. Yes; 4 weeks before and 4 weeks after termination of the pregnancy.

Mr. SARASIN. And then you say that any claim based on medical complications are payable as other claims for disability, so you would in a complicated situation continue to pay disability wage replacement benefits?

Mr. WARE. Up to a maximum of 26 weeks.

Mr. SARASIN. Which is also the maximum for all other types of illnesses and diseases?

Mr. WARE. That's right.

Mr. SARASIN. Is there a further showing? How do you establish this continuation point after the 8-week period?

Mr. WARE. That is established by—the program works on the same premise as the basic disability program, that you have to have a statement from a doctor, a doctor's statement on what the illness is, substantiating the illness. The doctor also in a pregnancy case has to establish the termination of pregnancy. We can't pay before. We have to pay after the fact, 4 weeks before and 4 weeks after.

Also complications. That is also confirmed by a doctor's medical report. We also have on our staff the availability of medical con-

sultants. When we have a problem of doubt, we actually refer the claimant to a doctor of the State's own choosing to verify the extent of the alleged disability.

Mr. SARASIN. Would you run through that again for me? You don't try and guess when that 4-week period precedes the childbirth, but you would pay for that after the fact?

Mr. WARE. That's right. It has to be the time of termination that the doctor establishes for the pregnancy, and then we pay 4 weeks before and 4 weeks after that.

Mr. SARASIN. Suppose you had an individual who was working 1 week prior to childbirth and worked for that employer for 3 weeks, for 4 full weeks prior to childbirth. Would you pay that period anyway?

Mr. WARE. No; the option is the option of the claimant. If the claimant wanted to work up until the day before and come back the day after, that would be their option.

Mr. SARASIN. You only pay for the actual time lost?

Mr. WARE. That is right.

Mr. SARASIN. Your average is 7.1 weeks or 7.3 weeks in your actual experience?

Mr. WARE. That's right.

Mr. SARASIN. So apparently you have a lot of people who are working who are at a lot less than 7.3 weeks, so you must have some complicated situations.

Mr. WARE. That's right. I think we found in our experience, as I said, we have been in it since 1948, that workers are working in households for the good of the family, and we find that they return to work as soon as they are actually able after the pregnancies.

Mr. SARASIN. Some people, of course, would not return to work as a matter of choice after giving birth. What happens in that situation? No they get their 8 weeks?

Mr. WARE. They get their 8 weeks, and they are actually terminated, because what happens also is, the employer offers the job back after that period, and if the claimant doesn't accept the job, we are notified in the unemployment disability insurance program, and they are automatically terminated from the program and called in for a hearing if they have any question of what happens in that case.

Mr. SARASIN. Now, is that offer made 4 weeks after the childbirth?

Mr. WARE. Yes, it is, because that is the legitimate period in which they must pay if that claim is a pregnancy claim.

Mr. SARASIN. So, if the individual worked until the day of childbirth, you could be surprised once in a while? You don't automatically pay the next 8 weeks?

Mr. WARE. No; we don't. There has to be a claim submitted by the claimant based on pregnancy. The doctor's certification and everything else.

Mr. SARASIN. Then they would only really be entitled to 4 weeks after childbirth?

Mr. WARE. That's right.

Mr. SARASIN. Now, does the New Jersey plan pay for abortion?

Mr. WARE. The New Jersey law reads—I will quote it right from the law. This is under section what we call 4321–39, and it is called, "Limitation of Benefits," and it reads:

> Notwithstanding any provisions of the temporary disability benefits law, no benefit shall be payable in the state plan to any person, and it is under section [E], for any period of disability due to pregnancy or resulting childbirth, miscarriage, or abortion, except for disability existing during the 4 weeks immediately before the expected birth of the child and the 4 weeks following termination of the pregnancy.

Mr. SARASIN. So, if a woman was pregnant and in her sixth month had some complication with pregnancy, you would not pay?

Mr. WARE. If it was a complication.

Mr. SARASIN. Would you repeat the 4 weeks before and 4 weeks after?

Mr. WARE. I will read that again for you, and this is a limitation of benefits:

> For any period of disability due to pregnancy or resulting childbirth, miscarriage, or abortion, except for disability existing during the 4 weeks immediately before the expected birth of the child and the 4 weeks following the termination of pregnancy.

Now, what this does, it puts us in a position of saying that we cannot pay benefits during that other 4-week period, 4 weeks before or 4 weeks after. You have to also remember I read in the testimony the statement that our attorney general's opinion for the first time included pregnancy complications, and that these pregnancy complications can be taken again based on a doctor's certification on an abortion required to protect the health and life of the claimant, and that would be the only exclusion to that.

Otherwise, prior to that, the law was written in 1948, but it would exclude completely any payment of abortion.

Mr. SARASIN. Or any other medical complication of that pregnancy?

Mr. WARE. That's right.

Mr. SARASIN. Prior to the attorney general's opinion?

Mr. WARE. That's right.

Mr. SARASIN. So you bracketed childbirth by 4 weeks, one side or the other, and anything happening prior to that time just wouldn't be covered?

Mr. WARE. That's right, that would also include miscarriage during that early period.

Mr. SARASIN. So you wouldn't get into disability or medical payment for that?

Mr. WARE. That's right.

Mr. SARASIN. Then the attorney general said that you have to cover the medical complications as you would any other disability?

Mr. WARE. That's right.

Mr. SARASIN. Now, does that cover an abortion or does it simply cover the complications arising out of an abortion?

Mr. WARE. It just covers the complications.

Mr. SARASIN. So then you would not pay a disability or you wouldn't pay medical benefits for an abortion?

Mr. WARE. No; we would not.

Mr. SARASIN. As I understand the testimony, every private plan has to be at least as good as the State plan?

Mr. WARE. Yes; that is right.

Mr. SARASIN. Mr. Ware, thank you very much. You have been most helpful for the committee.

Thank you, Mr. Chairman.

Mr. WEISS. Mr. Le Fante?

Mr. LE FANTE. Mr. Sarasin already touched upon most of the question I had, but I would like to take this opportunity to thank Mr. Ware for this testimony. It has been most helpful to us. I know how hard he works with Commissioner Horn, and his tireless effort has been indicated in the running of a good department.

I want to take this opportunity to commend him personally and thank him for his testimony.

Mr. WEISS. Thank you, Mr. Le Fante.

Mr. Pursell?

Mr. PURSELL. No questions, but thank you for your testimony.

Mr. WEISS. Let me just ask one follow-up question to Mr. Sarasin's, and that is, do these statistics that you submitted to us include now the disability claims due to complications in the pregnancy disability matters?

Mr. PURSELL. No, they don't. The pregnancy claims, as shown here, are what we call just straight pregnancy. The other claims are actually in the general category of all claims, because they are just considered as they are by law, just disability claims, regular disability, not put in as pregnancy claims.

Mr. WEISS. I see. Now, prior to 1975, prior to the attorney general's opinion, are you saying that there was no coverage either under the pregnancy disability or under the general disability for complications arising from pregnancy?

Mr. WARE. Yes; that is right.

Mr. WEISS. Mr. Sarasin?

Mr. SARASIN. Yes. You actually asked the question I had, Ted, and I sort of zeroed in on abortion, and now getting back to a complicated pregnancy, the individual would be entitled to 26 weeks of disability benefits for a complication arising out of a pregnancy as well as a complication arising out of an abortion, for a complication that arises from the moment of conception until 4 weeks before the expected childbirth?

Mr. WARE. Yes, that is right.

Mr. SARASIN. Thank you, Mr. Ware.

Mr. WEISS. Mr. Ware, thank you very much. I think, without doubt, this has been very helpful testimony, because we have been running into situations of testimony that indicated that there is no experience with this kind of legislation, and I think that your testimony fills a very clear gap that had existed for the most part.

Thank you for taking the time and trouble to come.

The committee's hearings on this particular matter, the subcommittee's hearings are now concluded, and the subcommittee stands in recess until 2 o'clock this afternoon in the same room to consider the age discrimination matters.

[Whereupon, at 12:15 p.m., the subcommittee was recessed.]

[Material submitted for inclusion in the record follows:]

35-249 O - 77 - 6

SUMMARY OF THE NATIONAL ASSOCIATION OF MANUFACTURERS

STATEMENT ON H.R. 6075

1. The National Association of Manufacturers believes that the essential question to be asked in consideration of H.R. 6075 is how far society chooses to go in subsidizing parenthood.

2. The NAM believes that the scope of H.R. 6075 is much too sweeping and that the bill would have far-reaching, perhaps unintended, effects on employers' personnel practices and fringe benefit plans.

3. The NAM believes that Section 1, in requiring that pregnancy not only be included in fringe benefit plans but also that it be treated the same as other illnesses, has the potential for totally disrupting the operations of benefit plans. Furthermore, the language of Section 1 is likely to require over-coverage in disability and medical plans which will unnecessarily increase plan costs.

4. The NAM believes that Section 2 is, at best, superfluous since the intent of the Act is accomplished through Section 1. In mandating increased benefits and prohibiting any reduction in other benefits, Section 2 destroys the ability of companies to compete with companies which do not provide such plans.

Statement of the

National Association of Manufacturers

On H.R. 6075

Submitted to the Subcommittee On Employment Opportunities

Of the

House Committee On Education and Labor

June 29, 1977

As a representative of more than 13,000 employers of all sizes, the National Association of Manufacturers is deeply concerned with equal employment opportunity.

We have closely studied provisions of H.R. 6075 which amends Title VII of the Civil Rights Act in order to clarify the Act's provisions as they relate to pregnancy. The NAM recognizes the important contributions which women make through their work and we continue to support and encourage equal treatment of women in all phases of employment. We feel that discrimination against any employee, whether on the basis of sex, race, religion or national origin, is ultimately detrimental to business operations.

We do not wish to argue the issue of discrimination, however, for as we see it, the question of whether or not to treat pregnancy as any other disability is not necessarily a women's issue. The true decision that must be made is how far society chooses to go in subsidizing parenthood. We do not pretend that all pregnancies are planned or that pregnancy is entirely voluntary. We have, however, moved into an era when a couple has considerable control over becoming parents. Within this climate, it is appropriate to ask how much of the economic responsibility for parenthood

will be assumed by those men and women who choose to have children and how much of the responsibility will be assumed by society--either directly through taxation or indirectly through requirements placed on employers.

It is time, in dealing with social legislation, to begin setting some priorities, because it is becoming more and more apparent that we cannot do all things. In the broadest sense of the term, our resources are limited and we must begin to think in terms of where we are going and how we want to use our resources.

The issue of cost may not be a legitimate factor when balanced off against equitable treatment. However--and this has been illustrated year after year in extended debate on national health insurance--cost certainly must be considered in making important social decisions. The cost for rearing a family of four is estimated to be around $250,000 from cradle through college. The extend to which society can assume this cost is virtually unlimited. Congress could require that employers pay all of a family's medical expenses; Congress could require that employers provide disability benefits for pregnancy; Congress could require that employers provide paid leave to both mothers and fathers for child rearing; Congress could require employers to finance day-care centers; and Congress could require employers to subsidize a child's college or vocational education. But all members of Congress certainly must ask themselves if their constitutents are prepared to pay the cost for any of these requirements.

The NAM believes that H.R. 6075, in its sweeping language and broad implications, goes too far in requiring employers to assume the economic responsibilities of parenthood. And no one should be so naive to think that employers will bear the cost alone. All of their employees (either directly or indirectly), and ultimately the consumer will share the burden.

THE SCOPE OF H.R. 6075

This bill was introduced as a reaction to the Supreme Court's decision in General Electric Company vs. Gilbert. The emotionality surrounding this case has obscured a practical consideration of the merits of this legislation. We would point out that the Gilbert case involved one company with one plan and that the central issue was coverage of pregnancy under a weekly accident and sickness benefit plan.

Enactment of H.R. 6075 would affect all employers, many of whom already provide coverage for pregnancy. Furthermore, it would impact not just disability plans, but all employer-sponsored benefit plans. Consideration of this bill should be taken out of the context of the Gilbert case and it should be evaluated separately. We believe that Congress is taking a much too simplistic view of a very complex issue. In the past, we have seen other "employee protection" legislation passed. But the true impact and burdens of such legislation on business operations has been enormous. We would hope that before this happens again, serious consideration will be given both to the true need for H.R. 6075 and to the practical implications of the bill as it is currently written.

NEED FOR THE LEGISLATION?

There is pervasive, erroneous notion that employers arbitrarily choose what they will and will not cover in employee benefit plans. The truth is that, in providing benefits, employers generally respond to employees' needs--articulated either through collective bargaining or directly from employees. Union-free employers frequently conduct employee benefit surveys to compile realiable statistics on how employees wish the benefit dollars to be spent. This same observation can be made on employer personnel policies, i.e.

they generally adhere to the needs of the employees.

In its testimony before this Subcommittee last April, the Campaign to End Discrimination Against Pregnant Workers stated as justification for this legislation the following:

> "Employers routinely fire pregnant workers, refuse to hire them, strip them of seniority rights, and deny them sick leave and medical benefits given other workers."

This statement simply is not true today and could not be verified statistically. It is a very rare medical plan that totally excludes any coverage for pregnancy-related treatment; approximately 40 percent of disability plans in effect today provide some coverage for pregnancy; and seniority rights are usually protected through a company's leave of absence policy.

The AFL-CIO told the Subcommittee on Employment Opportunities that:

> "Much of the disparate treatment of women in employment has come from unfounded assumptions about their lack of interest in continuing careers because at some time they are likely to become pregnant and have children."

The truth is that women who bear children have not consistently indicated such an interest in a continuing career. The best data available shows that 40 to 50 percent of women taking pregnancy leave do not return to work. When a women takes time off to have a child, there is inevitably some break in her career. But the length of that interruption has traditionally been determined to a large degree by the woman herself.

With the changing nature of the workforce and continuing problems with inflation, it becomes apparent that more women will seek coverage for pregnancy-related expenses. But the details of this coverage can much better be determined jointly by employees and employers than through legislation such as H.R. 6075, which in its presently written form will be extremely expensive to society.

PRACTICAL IMPLICATIONS OF H.R. 6075: SECTION 1

As we interpret the language of section 1 of H.R. 6075, the bill would not only require that employers cover pregnancy under disability plans (as was the issue in the Gilbert case), but that pregnancy will be covered in such plans like any other disability. Furthermore, Section 1 is susceptible to the interpretation that pregnancy must be covered under employer-sponsored medical plans and that this coverage must be equal to that for any other medical condition.

The NAM wonders if Congress really intends such sweeping legislation. If the intent of the legislation is to insure that coverage for pregnancy, childbirth, and other medical conditions be included in fringe benefit plans, then the language should be changed; because what we have now in Section 1 would do more than that. Of course, the total impact of Section 1 on benefit plans would come to light only after the employer is given the responsibility for compliance--after the massive interpretive regulations which this bill would require are promulgated--but we can already point to problems.

Disability Plans:

The duration of benefit payments under disability plans varies all over the board. Some plans only pay for a maximum of a few weeks; others pay as much as 52 weeks. Within the administration of these plans, the benefit period for disabilities also varies considerably: it may be two weeks for pneumonia and it may be six months for a heart attack. The benefit period is determined largely by the attending physician who certifies disability and also, to some extent, by the plan's experience with an illness, i.e. the standard duration of incapacitation. Under such plans, disabilities must be treated individually. In other words, what is adequate time off for one disability may be quite inadequate for another type of disability. Therefore, adequate time off for pregnancy would not necessarily be comparable to that for a broken toe or major surgery.

Whereas all other benefit periods are related only to the ability of the employee to work, pregnancy is different. The actual disability period for the women must be separated from the subsequent needs of the child. As the Act is currently written, pregnancy disability could realistically be expected to begin with morning sickness and continue through childbirth until a physician certifies the women as able to work. Since doctors are inclined to listen to the patient's view on ability to work, he may have difficulty separating her well-being from her desire to stay with the child.

In its testimony, The Campaign to End Discrimination Against Pregnant Workers stated that:

> "...all pregnant women have some period of disability, beginning in the normal pregnancy with labor itself and continuing through the normal recuperation period of 3 to 8 weeks after childbirth."

It is very unlikely, however, that under Section 1 as it is currently written such a limitation could be applied to the disability period. If a plan pays benefits to a maximum of 52 weeks and a doctor certifies the women's disability for that length of time, then under Section 1 employers would be required to pay benefits for a full year.

Also under Section 1, the term "related medical conditions" is undefined. Would post-partum depression be included? And if so, what would happen to a plan that excludes payment of mental and emotional disorders? Would the plan then have to cover all types of depression? This possibility raises the spectre of a significant portion of employees--both men and women-- drawing extended benefits for emotional problems. And the potential for abuse in this area is horrendous.

Finally, there is the probability that, without some reasonable limitation on duration of benefits, an employer's disability plan could become a type of extended severance pay plan. Since 40 to 50 percent of the women who take pregnancy leave do not return to work, it can be anticipated that close to half of the disability payments will constitute severance pay. Such a situation would result in a special termination benefit for a single class of employee (pregnant women) which is denied other employees.

Medical Plans:

The language of Section 1 appears to require that medical plans provide the same coverage for maternity expenses as it does for other types of illness or injury. This requirement shows a serious lack of understanding of group medical plans. Furthermore, it promises to exacerbate the problems employers are having with health care cost escalation--a situation which is reaching crisis stage.

It is a relatively rare medical plan that covers all types of disorders and all types of services on the same basis. A plan may, for example, require a cost-sharing from the employee of 20 percent for purely physical disorders but require a 50 percent cost-sharing for mental disorders. A plan may cover certain procedures if performed in a hospital while excluding those procedures if performed in a doctor's office.

The very divergent nature of medical plan coverages makes the requirements of Section 1 virtually impossible. The first problem employers will have with Section 1 is figuring out how to alter their medical plans so that all coverages are equal. For example, will a plan which uses a surgical schedule be in violation of the Act if obstetrical procedures are reimbursed at a different rate from an appendectomy? Suppose a plan pays hospital benefits for all other

disabilities up to a maximum of 180 days but limits the number of days for a normal pregnancy to 20 days? Will the plan be required to cover hospital stays for a normal pregnancy up to 180 days? These kinds of requirements would result in serious over-coverage in medical plans and would require needless increases in premiums.

Furthermore, as we interpret Section 2 (see page 9), if a medical plan provides more liberal benefits for pregnancy than for other disabilities, then all benefits must be brought up to equal those for maternity. For example, if a plan provides first dollar coverage for doctor visits related to pregnancy but requires a $50 deductible for doctor visits related to other treatment, it appears that Section 2 would require that the deductible be totally eliminated. Another example: A plan might cover hospital charges for a normal pregnancy at 80% up to a maximum of $600, then after a $100 deductible pays the excess expenses at 100%. But this same plan might pay hospital expenses for other disabilities at 80% up to a maximum of $2,000 and then pays 100% of the excess. In this instance, the plan would have to be completely redesigned to bring all other reimbursements in line with the more liberal pregnancy schedule. These examples are not unrealistic and the changes which would be required fly in the face of employers' efforts to rationally contain escalating health care costs through plan design.

We can also point to another problem. Some medical plans require that maternity benefits will be paid only if conception occurred after the effective date of the plan. In order to equalize treatment of pregnancy, a plan could require that all disabilities be subject to a "pre-existing conditions" provision. However, it appears that Section 2 would prohibit such an action, since this provision could have the effect of reducing benefits for

other disabilities. The only thing an employer could do would be to eliminate the requirements for pregnancy, thus picking up a medical liability which was in effect before the employee came under his plan.

Effective Date:

A final general note--this bill provides no lead-in time for employers to amend their plans. Should this bill be enacted, some reasonable period must be provided for employers to set up the coverage the bill mandates. As a purely practical matter it is necessary not only to plan fiscally for the added coverage, but also to redesign plans and re-negotiate with insurance carriers, where necessary. The practical reality that these changes could not be accomplished overnight must be considered.

PRACTICAL IMPLICATIONS OF H.R. 6075: SECTION 2

The practical problems resultant from Section 1 pale by comparison with those of Section 2. Indeed, if the function of H.R. 6075 is to eliminate differential treatment resulting from pregnancy, Section 2 is superfluous at best: the Act's purpuse is fully achieved by the first section. More accurately, Section 2 appears to have been appended as a continuous penalty to those employers foolish enough to have offered benefit plans in the past. It says in effect that employers who yesterday excluded pregnancy from fringe benefit plans--although such treatment was fully permissible at the time--must compensate by not only adding on these new benefits but also continuing them indefinitely into the future--this despite the fact that the employer was never obliged to provide any benefits to begin with and would not be so obliged now had he not offered benefits at all. Indeed it serves as competitive punishment to those who have afforded their employees fringe benefits vis a vis those who have provided none at all.

Section 1 gives us the problem of determining the level at which benefits must be provided. Section 2 creates a further problem: that of the duration for which such benefit plans must continue. It is questionable whether the wording of Section 2 would allow even an employer whose plan has been brought into compliance ever to reduce benefits across the board. Would demonstration of imminent bankruptcy constitute acceptable grounds for benefit reduction? It is not clear. Assuming the sufficiency of dire consequences, would anything less suffice? We question seriously whether an employer could even modify a benefit package upward if such modification were to substantially reduce or eliminate one kind of benefit. We fear Section 2 will bind an employer to present benefits (plus, of course, pregnancy coverage) as a permanent minimum. Further assuming at some point an employer might be allowed to free himself from this obligation, at what date might he do so? A year later? Two? Ten? Finally, apart from the employer who seeks to change his benefit plan at some future time, what of the employer who can neither pass on nor absorb these added costs to begin with? Advocates of the bill lend assurances: the legislative language lends none.

The employer's contribution to the funding of these added benefits must, according to Section 2, be "adequate". It is possible that contribution adequacy will require that even under contributory plans no added costs for pregnancy coverage be borne by the employee. (The illogic of such a situation goes as follows: if an employee is paying say 20% or $200 for benefits, he/she should not have to pay anything more for coverage that through hindsight should have been included initially--this, despite the fact that had the coverage been included previously the employee would have been paying 20% of the cost of pregnancy coverage as well). Thus the employer will be made to

bear more than the 80% he anticipated, presumably ever after. Of course employers who, for the first time, adopt plans in the future, are free to set an 80/20 employer/employee contribution ratio--or whatever ratio they choose. Indeed the premiums of these employers need not reflect the added costs of pregnancy at all. The employers are completely free to set their contribution ratio at whatever level would yield the dollar amount which they would have paid without the inclusion of pregnancy. Seventy percent, sixty, whatever--the total cost of pregnancy can thus be borne by the employee.

Section 2 injures not only the employer, but the employee as well. It is a clear infringement of the protections provided under the Taft Hartley Act--interference with the employee's right to bargain collectively over the terms of their contracts. Beyond those employees covered by Taft Hartley, Section 2 denies all employees the right to determine whether this is in fact a benefit they want. As discussed earlier, we believe this is a benefit more appropriately the subject of negotiation than legislation.

In sum, Section 2 may create the situation under which plans currently in effect must be amended to provide current coverages plus pregnancy coverage indefinitely into the future. Existing benefits will become a permanent minimum, and no additional employee contribution for the newly mandated coverage may be demanded. Whether the employees want such coverage is irrelevant.

By singling out one classification of employers, Section 2 offers an arbitrary, inequitable and manifestly illogical approach to a complex situation. While supporters of the bill argue existing precedent for prohibiting any reduction of benefits, the pregnancy benefit situation is clearly distinguishable. First, the very inclusion of pregnancy benefits itself precludes any continuing effects of its ever having been excluded, and second, unlike the subject of statutory precedent, there is no legal or practical requirement that benefits

be provided at all.

As an elementary rule of contracts one may void an agreement entered into in reasonable reliance upon a material misstatement of fact. We maintain that by analogy the employer who would not have provided any benefits had the ultimate costs been known, should in all fairness be allowed to discontinue his plan.

Equity and fairplay call for it. It is arbitrary and capricious discrimination against employers providing benefits in favor of employers who don't.

CONCLUSION

To summarize our position, the NAM believes that H.R. 6075 is social legislation that goes too far in requiring employers, and ultimately society, to assume the financial responsibilities of parenthood. The language of Section 1 as it relates to the coverage of pregnancy, childbirth, and related medical conditions under fringe benefit plans is much too broad and would allow employers virtually no leeway in setting realistic limitations to such coverages. We find the requirements of Section 2 to be blatantly unfair.

This bill is a simplistic approach to a complex problem affecting all of society. We urge that Congress not move with unstudied haste on this bill. The implications are enormous and we recommend that they be fully explored before this bill is put to any vote.

COMMISSION ON THE STATUS OF WOMEN
250 BROADWAY, ROOM 1412
NEW YORK, NEW YORK 10007
Telephone: 566-3830

Dr. Ruth B. Cohen
CHAIRPERSON
Amalia V. Betanzos
VICE-CHAIRPERSON
Miriam Beckman
Joan Gant Cooney
Monsa D. Crawford, Jr.
Dr. Mary Cunningham
Sylvia Deutsch
Gregory Farrell
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Counsel/Secretary
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Dr. Marcella Maxwell
Marilyn Meltzer
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Phyllis Cerf Wagner
Jeanne E. Watkins
Shirley Werner

Marcia G. Behymer
STAFF ASSOCIATE

STATEMENT IN SUPPORT OF HR 6075 BY DR. RUTH B. COHAN, CHAIRPERSON, NYC COMMISSION ON THE STATUS OF WOMEN

The New York City Commission on the Status of Women is in support of HR 6075, a bill to amend title VII of the Civil Rights Act of 1964 to prohibit sex discrimination on the basis of pregnancy. This measure provides what was believed to have been provided initially in Sec. 1.701. It is made necessary by a contrary reading of legislative intent by the U.S. Supreme Court in General Electric v. Gilbert (492U.S.125)

The issue which this bill addresses is a critical component of any effective anti-discrimination policy. This is so, firstly, because childbearing is the major functional difference between women and men. As long as discrimination based on pregnancy is allowed, any policy prohibiting sex discrimination is without effect.

The issue which this bill addresses is critical to any effective anti-discrimination policy, secondly, because it relates to the keystone of a dignified life for the 36 million women who are in the labor force. These women represent 43% of all women over 16, the majority of whom work because of need. It should be noted that 46% of all women with children under 18 work and that these represent 30% of all working women. The denial to pregnant workers of fringe benefits available to other workers comes down especially hard on women, whose annual incomes are, as a result of job segregation by sex, and other discriminatory practices, $5000 less

than those of male workers.

Employers' policies perpetuate treating pregnant workers as a separate class. There is an argument advanced by some in industry and on the Supreme Court that pregnancy is a unique condition and that treating this condition differently does not constitute discrimination. This argument is acceptable to advocates of women's rights. The very establishment of pregnancy as a separate classification is discriminatory on its face. The conclusion that it is discriminatory is further encouraged by the inconsistency in using this argument. Pregnancy, like other conditions, may or may not effect an employee's ability to perform a given job. There are numerous physical conditions applying only to men which are not excluded in fringe benefit coverage. For example, prostatism is unique to men. Yet, no cases have been brought to light where employers treat this differently from other medical conditions.

Another inconsistently-used argument relates to the supposed voluntary nature of pregnancy. The argument is, firstly, based on error of fact--it assumes incorrectly that all pregnancies are based on the woman's decision to bear a child. Furthermore, it does not consider the fact that disabilities arising from pregnancy, when they do occur, cannot be considered voluntary, nor, in most cases, predictable. Secondly, the argument is irrelevant, unless one assumes that women, if they must work, must also bear children. The argument, thirdly, is inconsistently used since voluntary conditions when men are concerned are covered.

There is a further discriminatory aspect of the current benefit status of men and women. Women are now denied benefits for precisely the same disabilities covered for men. If a woman, for example, suffers from a cardiac condition, high blood pressure, or diabetes, and if these disabilities follow or are exacerbated by pregnancy, she is denied benefits. If a man suffers from these disabling conditions, he is fully entitled to whatever coverage his employer provides for non-occupational illnesses or injuries.

Statement in Support of HR 6075 by Dr. Cowan

July 13, 1977

Several states, including New York, have already determined that, under their anti-discrimination laws, women with pregnancy-related disabilities cannot be denied disability insurance benefits. Because of the importance of this issue to New York and to women, Mayor Beame had included this measure in his priorities for Congressional action this year. The New York City Commission on the Status of Women urges Congress to act to end all forms of discrimination against pregnant workers in every state and to guarantee the same minimum standard of protection throughout the country.

88-240 O - 77 - 7

July 8, 1977

Hon. Augustus F. Hawkins, Chairman
Subcommittee on Employment Opportunities
House Education and Labor Committee
Room B-346A
Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

This correspondence represents the views of the American Osteopathic Hospital Association on the bill H.R. 5055. We would be most appreciative if this could be made a part of the permanent hearing record on this legislation.

H.R. 5055 would amend Title VII to explicitly forbid sex discrimination based on pregnancy, childbirth, and related medical conditions. Passage of this bill would, for all practical purposes, void the Supreme Court ruling in Gilbert v. General Electric that excluding disability benefits for pregnant employees does not violate Title VII.

Passage of this bill would have a major impact on hospitals since a significant number of their employees are female. We are not arguing against passage of this legislation--but we do caution that the impact on health care costs is of concern to this Association and the Congress.

It is our recommendation that should such a bill be enacted into law, the costs incurred by hospitals as a result should be allowed as a pass-through in any cost containment program instituted by the Congress and the President.

Thank you for the opportunity to present our thoughts on this proposal. If you have any questions, I would be pleased to respond to them.

Sincerely,

C. Robert Benedict

C. Robert Benedict
Director, Washington Office

cc: Hon. Paul Rogers
Hon. Dan Rostenkowski

95 249 163

1211 Connecticut Ave., N.W., Suite 602, Washington, D. C. 20036 (202) 293-3020

July 5, 1977

Honorable Augustus Hawkins
House of Representatives
2350 Rayburn Building
Washington, D.C. 20515

Dear Mr. Hawkins:

I strongly oppose any legislation requiring an employer to cover maternity expenses and pay for pregnancy leave. There seems to me a vast difference between a disability liability and pregnancy and maternity expense. The former is generally accidental and unavoidable, while the latter, although accidental in some cases is certainly not unavoidable. There are still certain responsibilities that individuals must assume for themselves.

These bills, H.R. 5055 and H.R. 6075, have all the earmarks of a grandstand play for votes and another attempt to rape employers.

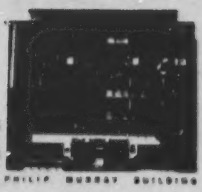
Sincerely,

Jerry Gregson

Jerry Gregson
3332 South Elm
Tempe, AZ 85282

cc: Eldon Rudd
Bob Stump
Morris Udall
John J. Rhodes

P.S. I am not an employer. I am an employee and I don't feel that my present or past employers should have to pay the price for my pleasures.



DAVID J. FITZMAURICE
President
GEORGE HUTCHENS
Secretary-Treasurer

INTERNATIONAL UNION
OF ELECTRICAL, RADIO
AND MACHINE WORKERS

PHILIP MURRAY BUILDING

PHONE: 296-1200 (Area Code 202) Telegrams: TWX 710-822-1100
1126 SIXTEENTH STREET N.W.; WASHINGTON, D.C. 20036
CABLE ADDRESS: IUEELECTRO

July 12, 1977

The Honorable Augustus F. Hawkins
Chairman, Subcommittee on
Employment Opportunities
Committee on Education and Labor
United States House of Representatives
Washington, D. C. 20515

Dear Congressman Hawkins:

Enclosed are copies of my statement in support of H.R. 6075. The statement was originally presented to the Subcommittee on Labor of the Committee on Human Resources of the United States Senate.

We are grateful for the effort you have devoted to this issue and look forward to the early passage of the House Bill.

Sincerely yours,

David J. Fitzmaurice

David J. Fitzmaurice
President

Enclosure
DJF:wnj

STATEMENT

OF THE

INTERNATIONAL UNION OF ELECTRICAL,
RADIO AND MACHINE WORKERS,
AFL-CIO-CLC

ON

S.995

PRESENTED BY

DAVID J. FITZMAURICE, PRESIDENT,
INTERNATIONAL UNION OF ELECTRICAL,
RADIO AND MACHINE WORKERS, AFL-CIO-CLC

BEFORE THE

SUBCOMMITTEE ON LABOR
OF THE COMMITTEE ON HUMAN RESOURCES
OF THE
UNITED STATES SENATE

APRIL 27, 1977

My name is David J. Fitzmaurice. I am President of the International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC and appear here on behalf of the union.

More than a million women are employed in the electrical equipment manufacturing industry. No other durable goods manufacturing industry has any comparable number of women workers. Approximately 40% of the workers in the electrical equipment manufacturing industry are females and approximately 40% of the IUE's membership is female.

Women have always been a substantial portion of the labor force in this industry.

The IUE has throughout its existence carried on an active program to protect women against discrimination because of pregnancy.

My appearance here today to urge the prompt enactment of S.995 has been preceded by strenuous efforts by IUE at the bargaining table, before administrative agencies and in the courts to put an end to the inequities women suffer because of pregnancy. The IUE brought the case against GE on behalf of Martha Gilbert and all female employees of GE throughout the United States. The Supreme Court's decision that discrimination because of pregnancy was not discrimination because of sex makes necessary the enactment of S.995 to let the Supreme Court know that Congress did intend that its prohibition of discrimination because of sex prohibits discrimination because of pregnancy.

I am personally aware of the discrimination which women in GE plants suffer because of pregnancy. First, as an employee of GE, then as president of a local union representing GE workers in Cleveland, Ohio and then as a member of bargaining committees meeting with GE over the years to negotiate national agreements applicable to GE employees throughout the country, I have participated in presenting to GE the facts which document its discriminatory treatment of females because of pregnancy. And finally as a national officer of IUE, having served for eight years as International Secretary-Treasurer and now serving as International Union President, I have supervised massive efforts of our union to correct sex discrimination because of pregnancy at the more than 600 plants whose employees we represent.

History Of IUE Efforts

The IUE's efforts in dealing with pregnancy problems are but a part of a larger program in which the IUE has surveyed each of its locals to ferret out all forms of race and sex discrimination, and followed up the survey with utilizing grievance and bargaining procedures to correct discrimination, and when unsuccessful there, filing of charges with administrative agencies and suits in the courts, including suits under the Equal Pay Act and Title VII. The IUE program is being followed by several other unions, and is looked upon favorably by the EEOC.

The women in plants we represent are bitter about the treatment they receive when they become pregnant.

Our members have either individually or through the IUE filed hundreds of charges with the EEOC alleging pregnancy-related discrimination. The IUE filed not only the suit against GE which went to the Supreme Court but also filed nation-wide suits alleging discrimination because of pregnancy against General Motors, Westinghouse Electric Corporation and other smaller companies. These cases involve other forms of discrimination in addition to the denial of disability benefits. For example, mandatory unpaid leave is involved in the General Motors case. Women at GM plants were routinely placed on leave without pay because of an arbitrary Company rule that all pregnant women must stop work when they reached the end of the seventh month of pregnancy even though they were willing and able to perform their regular jobs, their doctors certified them as able to work and no GM doctor had examined them or said they were unable to continue work; the Westinghouse case involves discharges, loss of seniority, loss of pension credit, loss of holidays and a variety of other charges of discrimination, all because of pregnancy.

The IUE began long before Title VII was enacted to attempt to persuade employers to treat the disabilities arising from pregnancy the same as other disabilities. Demands for disability benefits for pregnancy-related

disabilities were made by IUE of GE at every national negotiation beginning in 1950, with the first national agreement between IUE and GE, and continuing through the last in 1976. Prior to Title VII, GE had discriminated against pregnant women in many ways. But after Title VII was enacted, GE agreed to IUE's collective bargaining proposal to treat disabilities from pregnancy the same as disabilities from all other causes, but with a single exception. GE refused to agree to the payment of disability benefits. In 1966, during the first national negotiations between GE and IUE following the enactment of Title VII, GE, with respect to its hospital and medical plan, agreed that "maternity will be covered the same as any disability." GE today pays the full hospital and medical costs of all deliveries of babies for wives of male employees as well as of female employees.

The wives of male GE employees have half again as many babies as GE's female employees. The rate of birth is 45 babies born a year to wives per 1000 male employees, 32 a year per 1000 female employees. The cost to GE for babies of wives of male employees is so much greater than the cost for female employees that GE could pay each female employee six weeks of disability benefits plus hospital and medical expenses and still spend less money per capita per female employee on procreation costs than its spends per capita on male employees. The figures demonstrating

this fact are included in Attachment A of this statement. Nationwide working women show the same markedly lower fertility than non-working women. Excerpts from Census studies confirming and explaining this fact are appended to this Statement as Attachment B.

Until a year after IUE began its suit against GE for disability benefits for pregnancy-related disabilities, GE had required women to go on unpaid leave during their sixth or seventh month of pregnancy and remain away until two months after the birth of the baby, thus imposing a four or five months unpaid leave. For many employees this period of unpaid leave was economically disastrous. One of the plaintiffs in our suit was Sherrie O'Steen, who testified before the House Committee in its hearings on April 6 on HR 5055 (Tr. p. 1-21). Sherrie O'Steen had no savings when she was put on unpaid leave at GE's Portsmouth, Virginia plant. She had become unexpectedly pregnant just before her husband had left her. She applied for welfare. Her first welfare check did not arrive until several weeks after her baby was born. The electricity in Sherrie O'Steen's house was cut off because she could not pay her bill. She lived with a two-year old daughter in rural Virginia in winter time in an unlighted, unheated house, without cooking facilities and without refrigeration while she awaited the birth of her baby.

Sherrie O'Steen is not an isolated case. Most of the women whom IUE represents work because they need the money for their own support and the support of their families. IUE member Betty Williams at the Stromberg-Carlson plant in Rochester, New York was forced to go on welfare for the first time in her life when she was placed on unpaid leave because of pregnancy. Her Blue Cross and Blue Shield was cancelled. As a result she had to give up her personal doctor and change to a free public clinic. Stromberg-Carlson pays the full Blue Cross and Blue Shield premiums throughout the period any employee is off for any disability other than pregnancy. Betty Williams' husband had lost his job due to the closing of the Beechnut plant in Rochester shortly after she became pregnant, leaving Betty Williams the sole support of her husband and their three children The IUE has secured an order from the New York State Human Rights Board providing for making Betty Williams whole for the losses she suffered and directing Stromberg-Carlson to rescind its mandatory maternity leave rules, and to provide both disability benefits and Blue Cross and Blue Shield coverage during pregnancy-related absences on a non-discriminatory basis.

Costs To GE Of Covering
Pregnancy-Related Disabilities

GE pays disability benefits at the rate of 60% of straight time wages up to $150 per week for a maximum of 26 weeks for every period of absence due to a disability other than pregnancy or childbirth. GE admittedly pays for absences due to hair transplants, injuries incurred in fights, alcoholism, drug abuse and attempted suicides.

Applying standard collective bargaining methods for computing costs, the cost to GE of paying disability benefits for a six weeks period for all women pregnant in 1971 would have been 17/100 of a cent per hour. The figures are set forth in Attachment C of this Statement.

Not only are the women at GE discriminated against because of their sex by the failure to pay their disability benefits when disabled by childbirth or pregnancy but GE pays its female employees lower rates of pay than its male employees. The average female employee at GE has equal seniority and equal education but receives $2,000 a year less pay. As Mr. Justice Brennan stated in his excellent dissenting opinion in GE v. Gilbert and IUE, 97 S. Ct. 401, GE formerly had a job evaluation manual which directed that women be paid 2/3 of the rate of males for equal work. Part of the justification GE advanced for paying women lower rates was that women are worth less than males because of the additional costs involved as a result of pregnancies. GE's failure to pay disability benefits thus

penalizes women doubly: by not only being unable to maintain their incomes when disabled during pregnancy, but by receiving substantially lower wages during their entire working life at GE.

In addition to its attempts to secure disability benefits for pregancy-related disabilities, IUE is engaged in a program to attempt to correct the wage inequality. IUE has brought two Equal Pay Act suits against GE, filed charges with EEOC and has engaged an industrial engineer who is doing job evaluations at GE plants, in the interest of bringing the women's rates up to those paid males for equally evaluated work.

Medical Testimony As To
Duration Of Pregnancy-Related Disabilities

We have no reliable figures as to how long women at GE would be absent due to pregnancy-related disabilities because all of GE's figures were based on forced mandatory leaves for long periods of time. GE's medical testimony was the same as IUE's, that most women could work until childbirth and were fully recovered in two to three weeks. The testimony of the medical profession in cases all over the country is to the same effect. Dr. William C. Keetels, head of the Department of Obstetrics and Gynecology, University of Iowa, former president of the American College of Obstetricians and Gynecologists, and one of the most prestigious obstetricians in the United States, testified in

cases heard in Iowa that the medical profession today regarded it as desirable that pregnant women continue their usual prepregnancy activities, which means they should continue working, and were regularly fully recovered and able to resume work within two or three weeks after delivery. Dr. Keetels' testimony to this effect was set forth at pp. 51a to 56a in an appendix to the brief the IUE filed as amicus curiae in Cleveland Board of Education v. Le Fleur, 414 U.S. 632 (1974) and relied upon by the Iowa courts in Cedar Rapids School District v. Parr, 6 FEP Cases 101, 102 (Iowa Dis. Ct., Linn Counties, 1973), affd. by the Iowa Supreme Court, 227 NW 2nd 486, 12 FEP Cases 54 (1975). The medical testimony in Hanson v. Hutt, 83 Wash. 2d 195, 201, 517, P 2d 599 (1973) was summarized by the court as follows:

> "All five doctors who testified at the Commissioner's hearing concluded that 90 percent of pregnant women do not suffer from medical conditions that would impair their ability to continue working in their normal occupations. They also testified that most women can return to their jobs between 5 days and 4 weeks after delivery."

In Turner v. Department of Employment Security, 423 U.S. 44 (1975) the Supreme Court held that a presumption that a woman was disabled for six weeks after childbirth was unconstitutional as violating due process because "It cannot be doubted that a substantial number of women are fully capable of * * * resuming employment shortly after childbirth."

Of the six plaintiffs in the IUE's GE v. Gilbert case who testified in court, two had been cleared by their physicians for return to work four weeks after the date their babies were born, Erma Faye Thomas at Tyler, Texas and Mary Williams at Salem, Virginia. The plaintiffs in cases decided by the courts have often had even shorter periods of absence due to childbirth. Hutchinson v. Lake Oswego School District, 374 F. Supp. 1056, 8 FEP Cases 276 (DCD Ore. 1974), aff'd re Title VII issues of liability, 519 F.2d 961, 11 FEP Cases 161 (9th Cir. 1975), vacated and remanded 45 USLW 3462 (1977) (15 work days); Leonard v. Bd. of Ed. of Eau Claire, Wisconsin, 2 CCH-FPG 5210 (Wis. Dept. Industry Labor and Human Relations) (10 days); Liss v. School District of City of Ladue, 396 F. Supp. 1035, 11 FEP Cases 156 (DCED No. 1975) (22 work days); Danielson v. Bd. of Higher Education, 385 F. Supp. 22 24, 4 FEP Cases 885, 4 EPD ¶7773 (SDNY 1972) (12 work days).

Medical authorities are also agreed that less than five percent of pregnancies result in complications which will disable the employee from work for any substantial period before delivery. The woman with complications is a victim of illness in every sense of the word and failure to pay her disability benefits has no color of support even on employers' own theories of pregnancy being different from other sicknesses normally covered.

Rate Of Return To
Work Following Childbirth

The contention of employers that most females quit the labor force upon having a baby is untrue. Sixty percent of female employees at GE who were absent for childbirth were returning to work within 8 weeks after the date of the birth of their babies, in 1970 and 1971, the most recent years for which we have figures. Unlike employees who quit, women having babies often return months or even years later. Figures as to the number returning later than 8 weeks have been promised by GE but never supplied. It seems probable the percentage actually returning is substantially greater than 60% when those returning more than 8 weeks after childbirth are included. But even if it were only 60% this would be no basis for denying disability coverage. Since GE's turnover rate is 40%, the likelihood that a female employee absent for childbirth will be working for GE a year later is equal to that of both male and female employees not absent for pregnancy.

There are a number of major corporations where absences for pregnancy-related disabilities are covered by disability benefits on the same basis as other absences: For example, Firestone, Martin Marietta, Cummins Engine Co., IBM, Xerox, Polaroid, A.B. Dick, Prentice-Hall, and TRW. From several we have figures which show a great increase in the rate of return to work following childbirth. Xerox Corporation furnished us with figures showing an increase in rate of return

to work following childbirth from 46% in 1973 to 59% in 1974 to 69% in 1975. We have been told by members of the staff of Polaroid that the rate of immediate return after childbirth is now 80%. The many employees who return a year or two or more later are not reflected in their figures.

IUE Success In Bargaining For
Coverage Of Pregnancy-Related Disabilities

The IUE's efforts to correct discrimination because of pregnancy at companies other than GE, GM and Westinghouse has in some instances been more successful. Prior to the Supreme Court's decision in GE v. Gilbert and IUE, 97 S. Ct. 401, all companies having contracts with IUE had agreed that women could continue working and return to work as soon as able. While IUE's staff spent many hours working out collective bargaining language for resolutions of conflict by a third neutral doctor if there was disagreement between the woman's doctor and the company doctor, in practice we have had no cases involving any disagreement. Many women are now working until their babies are born. And the women are regularly reporting back to work as soon as cleared by their doctor which is sometimes in four weeks but usually not until six weeks.

Also without exception the companies with which IUE deals had agreed that women could have the same rights to retain and accrue seniority although there are many grievances, charges with state and federal agencies and some court suits still pending involving losses of seniority which occurred before

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changes to accord the same seniority in the future as other disabled persons receive in order to conform to the EEOC Guidelines.

IUE has also negotiated a number of agreements which provide the same disability benefits for women disabled by pregnancy. I do not have a complete list but include in Attachment D to this Statement a list of those of which I am aware. If I learn of others before the record in these hearings is closed, I will supplement the list.

In negotiating with employers for the purpose of bringing disability benefits for pregnancy-related disabilities up to the level of other disability benefits in both duration and amount of benefit, amount wise and time wise, we encountered a great variation between insurance companies in the amount of insurance premiums quoted for groups equal as to size, age, and percentage of females. Our experience was similar to that reported in an article by Kistler and McDonough, Paid Maternity Leave - Benefits May Justify the Cost, Labor Law Journal, December 1975, pp. 782, 792, Table 2, where insurance companies quoted increased premiums ranging from 5 to 25%.

The official publication of the Society of Actuaries, Transactions, Publication Year 1976, containing 1975 Reports of Mortality and Morbidity Experience, Group Weekly Indemnity Insurance shows that the insurance industry has not revised its tables of expected number of births since the period of 1947-1949, when the birth rate reflected the baby boom which

followed World War II. The tables of expected number of claims are called tabulars. This publication, referring to the tables used by major insurance companies states that "The maternity tabulars do not reflect the substantial decline in birth rates in recent years, with the result that the actual-to-tabular ratios for maternity benefits are now down near the 40 per cent level, while the actual-to-tabular ratios for non-maternity benefits are generally near 100 percent or even higher." Table 3 - Group Weekly Indemnity Experience Groups with Less than 1,000 Employees Exposed 1970-1974 Policy Years' Experience, By Plan shows that Plans with 6 Weeks' Maternity Benefit had a ratio of actual claims on 6 weeks maternity benefits to expected claims for the year ending 1971 of 51%, 1972 of 40%, 1973 of 37% and 1974 of 42%. Table 3A, being the same table for a different group of insurance companies, showed the ratio of actual claims to expected claims for six weeks naternity for 1972 was 27%, for 1973 was 22% and for 1974 was 42%. A copy of this article is attached to this Statement as Attachment E.

The insurance industry has had virtually no experience with temporary disability benefits for pregnancy-related disabilities. Paul H. Jackson, actuary, testified in GE v. Gilbert and IUE that "there is very little actuarial experience by reason of the fact that the group business has been restricted, the maternity claims, to a six-weeks period and disability income coverage under individual policies is normally not paid when the absence is due to pregnancy" (Record as printed in Supreme Court, Vol. 11, p. 535). Jackson's estimate made in the GE case

of a $1.3 million increase in costs to provide non-discriminatory coverage for pregnancy-related disabilities rested on the assumption that 100% of the women covered by policies with a 13 weeks maximum coverage would be absent 13 weeks, and that average duration of claims under 26 week plans, would be 23 weeks and under 52 week plans would be 30 weeks (Vol. II, pp. 549, 550; Vol. III, pp. 846-847). Actuary Alexander J. Bailie in charge of group insurance for Metropolitan Life Insurance Company prepared GE Exh. 13 which made no prediction as to how long women would be absent from pregnancy-related disabilities but showed a cost of $1 billion if the average absence was 20 weeks, $1.3 billion if the absence averaged 25 weeks and $1.6 billion if the absence averaged 30 weeks (Vol. II, p. 737). The estimate of Peter M. Thexton, associate actuary, Health Insurance Association of America, made during hearings in the House on April 6, 1977 on the companion bill H.R. 5055, of an increase nationwide of costs of disability benefits of $600 million, represents a drop of a billion dollars from the Bailie figure of $1.6 billion. The differences between the figures indicate how conjectural all these figures are and that no one has any sound basis for assuming women will average more than 6 weeks absence once women are relieved of the inposition of mandatory leaves before and after childbirth.

Many of the electrical equipment manufacturers with whom IUE has entered into collective bargaining agreements for full coverage of pregnancy-related disabilities have apparently been

able to purchase insurance without indicating to us that they had any problem. Several companies however have asked us if it was acceptable to us that they become self insurers as to the coverage of pregnancy-related disabilities as they were of the opinion that they could pay all claims directly at a total cost to the employers less than the premiums quoted to them by the insurance companies. The IUE has agreed to several such arrangements. An arbitration award has recently been published which reveals that other employers and unions have made similar agreements for self insurance of the pregnancy disability claim at the same time that other disability claims were insured. Design & Mfg. Corp. and UAW Local 151, 68 LA 354 (Samuel S. Kates, arbitrator, March 14, 1977).

At least one insurance company, State Mutual Life Assurance Company of America, has recognized that employers may wish to become self insurers and has offered the public an arrangement by which the insurance company administers the program, by receiving and processing claims in a manner which appears to be the same as if the claim was insured but the employer pays all the cost of the claim plus a fee for administrative services instead of a premium.

The employers with whom we have entered into agreements for coverage of pregnancy-related disabilities on the same basis as other disabilities have seemed generally well pleased with the results. My impression of the satisfaction of these employers with the results has been paralleled by studies conducted by Prentice-Hall. Prentice-Hall has conducted three surveys of employer policies

with respect to pregnancy. The first was conducted in 1965, the second in 1972 and the third in 1973. A copy of the report of the 1973 survey is attached to this Statement as Attachment F. The results of these surveys were summarized by Prentice-Hall as follows (pp. 457, 460, 463, 465).

> "The new EEOC guidelines have spurred sweeping changes in maternity leave policies, and those changes are evident in the latest P-H survey on this important subject. The P-H research staff, in cooperation with the American Society for Personnel Administration, polled 929 companies across the country to pinpoint new trends in maternity leave policies. Results show that over half the firms have already changed their policies to conform to EEOC guidelines, and almost one-fourth anticipate making further changes.* * *
>
> "In 1965, just after Title VII took effect, P-H researchers asked over 1,000 employers about their maternity leave policies. Findings: Only 2 out of 5 offices in the 1965 survey said they granted maternity leaves. Three-fourths of the plants had leave policies, but most of these required the employee to stop working early in pregnancy; less than 20% allowed the pregnant employee herself to decide how long she wanted to continue working.* * * In 1972, shortly after the guidelines were issued, another P-H survey on maternity leave found three-fourths of all respondents had adopted maternity leave policies; 60% allowed the employee or her physician to decide how long she could stay on the job.* * *
>
> "Further changes in maternity leave policies are revealed in our current survey. According to our latest figures, 9 out of 10 respondents among both offices and plants have formal maternity leave provisions: 8 out of 10 let the employee or her doctor decide when she should quit working. * * *

"What about paying employees while they're absent during pregnancy? About three-fourths of the respondents apply their usual absence rules to pregnant employees, and an additional 8% never give sick pay, regardless of cause. But at 17% of the firms polled, sick pay is provided only for absences not related to pregnancy-- although this practice would appear to violate EEOC guidelines (see page 462). A few companies said they pay sick leave benefits only for pathological pregnancies -- those with serious medical complications. * * *

"* * * Some companies tailor their maternity leave allowances to match the disability benefits in their group insurance plan. Others tie in their allowances to state disability benefit programs.* * * Overall, about one-fifth (21%) of the firms we surveyed said they give sick pay to employees out on maternity leave.

" The duration of maternity leave benefits varies quite a bit. Just over half the employers that grant paid maternity leaves said they pay for six weeks or more before delivery; the rest pay from one to five weeks before the birth date. After the baby is born, two-thirds of these companies grant another six weeks or more of paid maternity leave; the other third pay from two to four weeks after delivery. Here's a sampling of plans and comments:

"' We grant a maximum of five paid days per year, accruable to a maximum of 20 days. We see no problem in granting it as long as it has been earned. While a pregnant (or ill) employee is on leave, she does not accrue additional sick leave credits. [Bank, Minnesota]

* * *

" The most frequent policy change reported is the switch to paid maternity leaves. Many firms told us their former policies included paid sick leave, but no pay for maternity leave; most of these companies

"said they now pay accrued sick pay to employees on maternity leave. Many have also dropped their old length-of-service requirements for maternity leave payments. Sample comments:

* * *

"' There's been a 180-degree turnaround in our policy: We now pay for maternity leaves of absence.' [Hospital, Missouri]

''At our company, we think paid maternity leaves are a good thing -- and long overdue. [Insurance company, Nebraska]."'

In the 1972 survey, Prentice-Hall reported on the high return rate. A copy of the report in the 1972 survey is attached to this Statement as Attachment G. On the subject of returns Prentice-Hall stated (p. 463):

" MOST OF THE WOMEN WHO TAKE MATERNITY LEAVES COME BACK TO WORK -- We asked survey respondents to tell us what proportion of their employees who were pregnant in 1971 quit their jobs and what proportion took a leave. Considering just those companies that had statistics available, half the plants, one-third of the office firms, and two-thirds of the hospitals said that 75% or more of the employees who were pregnant elected to take a leave. (In many of these cases, 100% of the employees took a leave.) And of this group, more than half reported a perfect score on "returns" -- that is, all the employees who elected a leave actually returned to work as scheduled."

The Bureau of National Affairs conducted a survey of Paid Leave & Leave of Absence Policies, November 1975, Personnel Policies Forum, Survey No. 111, in which it summarized the policies with respect to pregnancy as follows:

" Formal policies covering maternity leave apply to production employees in 87 percent of the PPF companies, to office employees in 91 percent, and to managerial employees in 92 percent. For both production and office groups, such policies are somewhat less common in manufacturing than in non-manufacturing or nonbusiness organizations (see Table 7).

" In some instances where there is no maternity leave policy as such, maternity benefits are provided under a sick leave policy: One respondent notes, for example, 'For all employees, maternity leave (disability due to childbirth or pregnancy) is treated under our Sick Leave provisions.' At one company with no maternity leave policy, the plant manager explains, as follows:

"We felt the best way to eliminate any sex discrimination practices with regard to maternity leaves was to get rid of the Maternity Leave Policy from our manual. We now treat a request for Maternity Leave the same as any Medical Leave request. The leave would be initiated by the employee; a Physician's statement would be needed to substantiate the illness and a leave for up to six months could be granted. Six months is the maximum leave granted for any Medical reason.

"By eliminating the Maternity Policy from our manual, our supervisors and employees (70% female) knew we were serious about our handling Maternity Leave like any other Medical Leave. So far it has worked well for us. (Small central manufacturing company)."

The extent to which these employers will continue with these non-discriminatory practices is as yet uncertain. The arbitration case previously mentioned, Design & Mfg. Co., 68 LA 854, arose when on December 9, 1976, two days after the Supreme Court decided the IUE's GE v. Gilbert case, the employer announced that disability benefits would no longer be paid for pregnancy-related disabilities. The employer argued that the collective bargaining agreement requiring such payments was entered into due to a mistake of law, namely, a supposition that the EEOC Guidelines were legal. The arbitrator rejected this argument and held that the employer was legally bound by its contract to pay benefits.

This arbitration case illustrates the urgent need for the expeditious enactment of S. 995 to prevent a retrogression in the progress which had been made under the EEOC Guidelines.

On behalf of the IUE and all of its members, I urge that this Committee report S. 995 favorably.

ATTACHMENT A

GE SUBSIDIZES PARENTHOOD BY MALE EMPLOYEES AT A COST SO IN EXCESS OF THE COST TO GE OF PARENTHOOD BY FEMALE EMPLOYEES THAT PAYMENT OF SIX WEEK DISABILITY BENEFITS WOULD STILL LEAVE MALE PARENTHOOD SUBSIDIZATION AT A HIGHER COST THAN FEMALE PARENTHOOD.

The record before the Supreme Court in General Electric Co. v. Gilbert and IUE, 97 S. Ct. 401 (1976) contained GE's Answers to Interrogatories which showed that in 1971 GE paid hospital and medical expenses for 2,772 pregnancies by female employees and for 10,279 pregnancies by wives of male employees (I App. 237, Answer of GE to Interrogatory No. 36). In 1971, GE had 224,192 male employees, 84,056 female employees (I App. 236, Answer of GE to Interrogatory No. 33). This amounts to 45 babies per 1,000 male employees, 32 babies per 1,000 female employees, or approximately one-and-a-half more babies per male employee than per female. The Census study showing a similar higher fertility rate nationwide for non-working wives as compared with working wives is set forth in Attachment B. Hence, per capita a male employee received 140% more in pregnancy related benefits from GE than a female employee. GE saves money on such benefits by hiring female employees.

Industry figures show that the annual average cost of physicians and hospital service per live birth in 1970-1971 was $1,118. Testimony of Frederick S. Jaffe, Vice President of Planned Parenthood Federation of America in Hearings on National Health Insurance before the Committee on Ways and Means, U. S.

of Representatives, 93rd Congress, 2nd Session, June 28, 1974, Volume 7, page 3,158. Applied to GE the cost for 1971 was $51.25 per capita for each male employee and $36.75 per capita for each female employee.

The district court in the GE v. Gilbert and IUE case, 395 F. Supp. 367, 376 (1974), found that absent complications women could work until the day before delivery and return within six weeks, thus making 6 weeks the average period of disability. In 1971, GE's average weekly benefit to female employees under its sickness and accident benefit program was $69.79 (I App. 227-228, 260, GE's Answer to Interrogatory 75). Multiplying the number of female pregnancies in 1971, namely 2,781,(I App. 253) by $69.79 by 6 gives $1,164,515 or the total cost to GE if it had paid 6 weeks disability benefits to each female employee who was pregnant in 1971. Since GE had 84,056 female employees in 1971 (I App. 236), the female per capita cost of six weeks benefits would have been $13.85.

If GE had paid 6 weeks disability benefits to each female employee pregnant in 1971, its per capita costs per female for parenthood would still have been less than its per capita costs per male for parenthood, as more fully outlined in the table below:

PARENTHOOD COSTS

	Per Capita Per Male Employee	Per Capita Per Female Employee	Male Percentage of Female Benefits
Cost of Physicians and hospital benefits for deliveries	$51.25	$36.75	140%
Cost of Pregnancy-Related Disability benefits for six weeks	———	13.85	———
TOTAL COST	$51.25	$50.60	101%

ATTACHMENT B

CURRENT POPULATION REPORTS

Special Studies

Series P-23, No. 49
Issued May 1974

POPULATION OF THE UNITED STATES

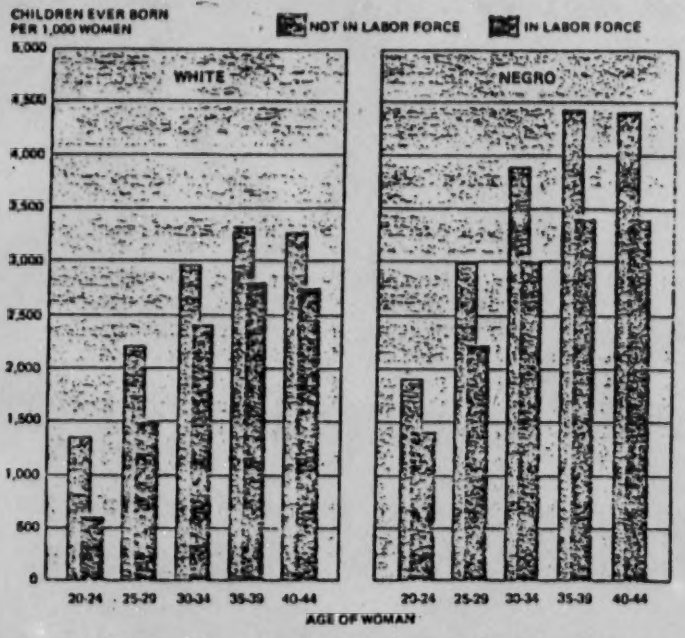
Trends and Prospects: 1950-1990

—Population Growth
—Composition and Distribution
—Economic Characteristics
—Population Projections

U. S. DEPARTMENT OF COMMERCE
Social and Economic Statistics Administration
BUREAU OF THE CENSUS

Figure 2.5 charts the markedly lower fertility associated with participation in the labor force among women 20 to 44 years old in 1970. The difference between the fertility of white women who worked and those who did not was greater among the women in the prime years of childbearing (their twenties) than among those who were past this period (in their thirties and early forties). The women who had passed the prime years of childbearing averaged about half a child less per white woman and about one child less per black woman for those in the labor force than for those not in the labor force.

Figure 2.5 Children Ever Born per 1,000 Women Ever Married, by Race, Age, and Labor Force Status: United States, 1970



Source: U.S. Bureau of the Census, 1970 Census of Population, Vol. II, 3A, Women by Number of Children Ever Born, table 44.

The simple fact of employment outside the home is only one of the reasons why working women have fewer children. Probably more of the working women than women who do not work are

unable to bear children. For those who can bear children, the restriction that outside work does, or could, place on the time available for childrearing is probably one of the more important considerations in restricting fertility. But, in addition, values and motives which lead many women to enter the labor market may also induce them to have fewer children than those whose role is more intimately identified with being wife and mother. Conversing about their family problems with other women at their place of work may reinforce these subjective inclinations. Given the upward trend in the education of women, which increases their employability, and given the increasing emphasis on woman's equality with man, the likelihood is that still more women will be seeking independent occupational careers and in the process will complete their reproductive period with lower fertility than at present.

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ATTACHMENT C

COST TO GE OF PROVIDING SIX WEEKS DISABILITY BENEFITS TO EMPLOYEES DISABLED BY PREGNANCY

The record before the Supreme Court in General Electric Co. v. Gilbert and IUE, 97 S. Ct. 401 (1976) showed that in 1971, there were 2,781 GE female employees pregnant (I App. 257) and that the weekly sickness and accident benefit averaged $69.79 (I App. 227,228, 250, GE's Answer to Interrogatory No. 75). Multiplying the number of female employees, namely 2,781, by $69.79 by 6 gives $1,164,515 or the total cost to GE if it had paid 6 weeks disability benefits to each female employee who was pregnant in 1971.

In 1971, the average number of GE employees who were covered by its insurance plan was 311,744 (I App. 236). GE employees are paid on the basis of 2,080 hours per year (52 x 40). To determine the per hour increase in cost of figuring 6 weeks disability benefits we have multiplied 311,744 x 2,080 to get 648,427,520 total hours of straight time per year. Dividing the total cost of 6 weeks disability pay, namely $1,164,515 by 648,427,520 gives seventeen one-hundredths of a cent as the additional cost per hour of including disability benefits assuming the average duration of a pregnancy absence is 6 weeks.

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ATTACHMENT D

LIST OF EMPLOYERS WITH WHOM INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL-CIO-CLC, HAS COLLECTIVE BARGAINING AGREEMENTS PROVIDING INCOME MAINTENANCE DURING ABSENCES DUE TO PREGNANCY-RELATED DISABILITIES FOR EQUAL AMOUNTS AND SAME MAXIMUM DURATION AS COVERAGE FOR OTHER DISABILITIES

The International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC or one of its locals has collective bargaining agreements with the following employers which provide that the employer will pay temporary disability benefits for absences due to pregnancy-related disabilities in the same amounts and for the same duration as for other disabilities:

Name of Employer	Location	Maximum Duration	Range of Weekly Benefits
A & B Beacon Business Machines Corp.	New York, N.Y.	26 weeks	60% of weekly wages but not more than $95
A. E. Electronics	New York, N.Y.	26 weeks	60% of weekly wages but not more than $95
Acme Electric Co.	Cuba, N.Y.	26 weeks	60% of weekly wages but not more than $95
Acrylic Optics (and Detroit Optometric Centers)	Detroit, Mich.	26 weeks	$70 - $130
Admiral Optical Co.	Detroit, Mich.	26 weeks	$70 - $130
Aetnacraft Industries, Inc.	Brooklyn, N.Y.	26 weeks	60% of weekly wages but not more than $95
Airco Speer Carbon Graphite	St. Marys, Pa.	13 weeks	$55

B & J Optical Services, Inc.	Lincoln Park, Okla.	26 weeks	$70 - $130
Birchbach Company Inc.	Freeport, N.Y.	26 weeks	60% of weekly wages but not more than $95
Bocen Communications Division, Lear Siegler, Inc.	Paramus, N.J.	26 weeks	2/3 of weekly wages but not more than $104
Brevel Motors Div. of McGraw-Edison Co.	Carlstadt, N.J.	26 weeks	2/3 of weekly wages but not more than $104
Cavitron Ultrasonics	Long Island City, N.Y.	26 weeks	60% of weekly wages but not more than $95
Chromalloy Corp.	Midwest City, Okla.	13 weeks	$60
Cooperative Services (also known as Detroit Coop.)	Detroit, Mich.	26 weeks	$70 - $130
Dearborn Optical Centers	Detroit, Mich.	26 weeks	$70 - $130
Duncan Electric Co.	Lafayette, Ind.	13 weeks	$35 to $50
EICO Electronic Instrument Co.	Brooklyn, N.Y.	26 weeks	60% of weekly wages but not more than $95
EOM Corporation	Brooklyn, N.Y.	26 weeks	60% of weekly wages but not more than $95
Ever Ready Thermometer Co.	New York, N.Y.	26 weeks	60% of weekly wages but not more than $95
Executone, Inc.	Long Island City, N.Y.	26 weeks	60% of weekly wages but not more than $95
Fine Arts Optical Co.	Detroit, Mich.	26 weeks	$70 - $130
Foon & Cole, Optometrists	Detroit, Mich.	26 weeks	$70 - $130

Cap Instrument Corp.	Hauppauge, N.Y.	26 weeks	60% of weekly wages but not more than $95
Gem Electronic Dist. Inc.	Farmingdale, N.Y.	26 weeks	60% of weekly wages but not more than $95
General Industries	Forrest City, Ark.	26 weeks	$70
General Optical	Detroit, Mich.	26 weeks	$70 - $130
Grand Machining Co.	Detroit, Mich.	26 weeks	$90
Harrison Warehousing Inc.	Harrison, N.J.	26 weeks	2/3 of weekly wages but not more than $104
Heekin Can Div. of Diamond International	Ancor, Ohio	26 weeks	[illegible]
Hi-Torc Department Breval Motors	Carlstadt, N.J.	26 weeks	2/3 of weekly wages but not more than $104
Industrial Mica Corp.	Englewood, N.J.	26 weeks	2/3 of weekly wages but not more than $104
IRC Burlington Division of TRW Electronics Branch	Burlington, Iowa	13 weeks	50% of straigh time wages but not less than $90 per week
ITT Electro-Products Div.	Roanoke, Va.	20 weeks	$70
James Crystal Mfg. Co.	Wyandotte, Mich.	26 weeks	$90
Lafayette Electronics Corp.	Paramus, N.J.	26 weeks	2/3 of weekly wages but not more than $104
Lafayette Radio Electronics Corp.	Syosset, N.Y.	26 weeks	60% of weekly wages but not more than $95
Laminall Plastics	Long Island City, N.Y.	26 weeks	60% of weekly wages but not more than $95

Larkin Optical	Detroit, Mich.	26 weeks	$70 - $130
Lektra Laboratories	College Point, N.Y.	26 weeks	60% of weekly wages but not more than $95
Loral Electronic Systems	Bronx, N.Y.	26 weeks	60% of weekly wages but not more than $95
Lundy Electronics & Systems, Inc.	Glen Head, N.Y.	26 weeks	60% of weekly wages but not more than $95
McLab, Inc.	Mt. Vernon, N.Y.	26 weeks	60% of weekly wages but not more than $95
Mastercraft Record Plating Co.	New York, N.Y.	26 weeks	60% of weekly wages but not more than $95
Milgray Electronics Inc.	Freeport, N.Y.	26 weeks	60% of weekly wages but not more than $95
Photovolt Corp.	New York, N.Y.	26 weeks	60% of weekly wages but not more than $95
Pontiac Coop.	Pontiac, Mich.	26 weeks	$70 - $130
Premier Metal Products Co.	Bronx, N.Y.	26 weeks	60% of weekly wages but not more than $95
Raycon Industries	Levonia, Mich.	26 weeks	$90
Robbins & Myers	Memphis, Tenn.	13 weeks	$50
Rowe International	Grand Rapids, Mich.		[illegible]
Signal Transformer Co., Inc.	Inwood, N.Y.	26 weeks	$95
Thorne Optical	Detroit, Mich.	26 weeks	$70 - $130

Torch Tip	Pittsburgh, Pa.	13 weeks	$65 -
TRW Inc.	Philadelphia, Pa.	26 weeks	$100
Twin Valley Coop.	Battle Creek, Mich.	13 weeks	$70 - $130
United Transformer Co., A Division of TRW, Inc.	New York, N.Y.	26 weeks	60% of weekly wages but not more than $95
Wagner Electric Co.	St. Louis, Mo.	26 weeks	$130
Waldes Kohinoor, Inc.	Long Island City, N.Y.	26 weeks	60% of weekly wages but not more than $95
Wayne Optical Co.	Detroit, Mich.	26 weeks	$70 - $130
Wilco Corp.	Indianapolis, Ind.	26 weeks	$60
Wolverine Wire Products Inc.	Hazel Park, Mich.	26 weeks	66 2/3 of wages
W. D. Zobel Co.	Royal Oak, Mich.	26 weeks	66 2/3 of wages
Yardney Electric Corp.	Pawcatuck, Conn.	26 weeks	60% of weekly wages but not more than $90
Local #431, IUE, AFL-CIO-CLC	New York, N.Y.	26 weeks	60% of weekly wages but not more than $95

ATTACHMENT E

PUBLICATION YEAR 1976

SOCIETY *of* ACTUARIES

Transactions

The work of science is to substitute facts for appearances and demonstrations for impressions.—RUSKIN

1975 REPORTS OF MORTALITY AND MORBIDITY EXPERIENCE

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NOTICE

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SOCIETY OF ACTUARIES

(PETER W. PLUMLEY, *Executive Director*)

(BERNARD A. BARTELS, *Administrative Officer*)

208 SOUTH LA SALLE STREET, CHICAGO, ILLINOIS 60604

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II. GROUP WEEKLY INDEMNITY INSURANCE

This is the twenty-eighth annual report on the continuing study of the morbidity experience of Group Weekly Indemnity insurance. In compiling this report, the Committee has included the available experience of employer/employee groups and has excluded the experience of trusteeships and association cases insuring employees of the member employers and the experience of union cases, whether or not insurance depends upon continued employment. The experience of plans written under State Cash Sickness Laws and the experience of insured groups outside the United States have been excluded.

RATIO OF ACTUAL TO TABULAR CLAIMS

Throughout this report experience is presented in the form of ratios of actual to tabular claims, based on the 1947–49 weekly indemnity tabulars, as reported in the *1962 Reports*. Caution must be used in interpreting the data contained in this report because, among other reasons, the 1947–49 tabulars may not accurately reflect current claim patterns. The maternity tabulars do not reflect the substantial decline in birth rates in recent years, with the result that the actual-to-tabular ratios for maternity benefits are now down near the 40 per cent level, while the actual-to-tabular ratios for nonmaternity benefits are generally near 100 per cent or even higher; this wide difference is concealed and may create distortions when the experience for maternity and that for nonmaternity are combined. The tabulars also fail to reflect certain factors, such as age distribution, industry classification, or size of case, which may have a relevant effect on the experience results.

CONTRIBUTING COMPANIES

The Committee wishes to express its gratitude to the companies that generously contributed data to this study. The report contains experience for the years 1970, 1971, 1972, 1973, and 1974. Six companies contributed data for all five years. Two additional companies contributed data for the first four years. The results generally reflect the composite effect of variations in company practice in administration and claim procedures, as well as variations in experience among groups. It should be noted, however, that the contribution of one company has up until now represented a major portion of the total experience. That company was unable to contribute 1974 experience, with the result that there is some difficulty in comparing the results of this year's study with those of prior years.

Because we use three-year totals of experience, the contribution of that company to the total results shown in this year's report is still much greater than that of any other company.

The majority of the companies contribute exposures and claims based upon policy years ending in the calendar year designated. If the renewal dates for all cases included in the study were distributed uniformly over the year, then the central point of the exposure for each policy year would be approximately January 1 of that year. However, this assumption may not be very precise because of a concentration of policy renewals in January and July.

The following companies contributed experience for the study, although not all of them contributed 1974 data:

Aetna Life Insurance Company
Connecticut General Life Insurance Company
Continental Assurance Company
Equitable Life Assurance Society
Metropolitan Life Insurance Company
Occidental Life Insurance Company of California
Prudential Insurance Company of America
The Travelers Insurance Company

ANALYSIS OF EXPERIENCE

Table 1 shows the experience for the period 1972–74 for each of eight plans (four different elimination periods; two different maximum benefit periods), all of which provide a six-week maternity benefit. All size groups are included. The corresponding experience of nonjumbo groups only (units with less than 1,000 insured employees) is displayed in Table 2 for each of four plan combinations. For those nonjumbo units for which the data were available, Table 2 separates the combined experience into its nonmaternity and maternity segments. Also included in Table 2 for each of the four plan combinations is the nonjumbo experience for the period 1972–74 of plans that do not provide a maternity benefit. Table 3 is a five-year trend analysis of the Table 2 experience for each year 1970–74 inclusive. Since 1974 data do not include the contributions of two companies included in 1971–73, Table 3A reflects the experience for only those companies that contributed during 1974 and shows it for the years 1972–74. Table 4 is an analysis of experience by size of experience unit. Results are shown separately for plans with and without maternity benefits. Table 5 analyzes the nonjumbo experience of plans with no maternity benefit by the female per cent composition of the experience units. Table 6 is an analysis of claim ratios by industry.

Table 1 shows results very slightly better than the results of a year ago. Actual-to-tabular ratios for twenty-six-week plans continue to run higher than those for thirteen-week plans. The ratios shown in Tables 2 and 3 confirm this relationship for plans with maternity benefits, but the ratios for thirteen-week plans are actually higher in 1972–74 than the ratios for twenty-six-week plans. Compared with those in the 1971–73 study, ratios for thirteen-week plans stayed about the same, while ratios for twenty-six-week plans improved slightly.

TABLE 1

GROUP WEEKLY INDEMNITY EXPERIENCE
PLANS WITH SIX WEEKS' MATERNITY BENEFIT
ALL SIZE GROUPS
COMBINED 1972–74 POLICY YEARS' EXPERIENCE, BY PLAN

Plan	No. Experience Units	Weekly Indemnity Exposed (000)	Actual Claims Including Maternity (000)	Ratio of Actual to 1967–69 Weekly Indemnity Tabular
1-4-13	413	3,067	2,062	93%
4-4-13	195	934	375	66
1-8-13	1,720	11,815	8,356	107
8-8-13	309	2,406	1,664	113
Total, 13-week plans	2,637	18,222	12,457	103%
1-4-26	217	3,295	3,458	138%
4-4-26	30	592	499	109
1-8-26	1,432	20,339	19,647	128
8-8-26	167	8,125	4,966	80
Total, 26-week plans	1,846	32,552	28,570	116%
Total, all plans	4,483	50,784	41,027	112%

Tables 2 and 3 show that the ratios for plans with no maternity benefit are lower than the ratios for the nonmaternity segment of plans with maternity benefits. Table 3 demonstrates that this result, which may be attributable to plan or exposure characteristics not reflected in the tabulars, has existed for several years.

An analysis of Table 2 over the past several years shows a gradual shift from maternity to nonmaternity plans in the exposure. This may be related to the gradual overall improvement shown in Table 1 over the past several years.

Because Table 3 showed some rather substantial changes from 1973

TABLE 2—GROUP WEEKLY INDEMNITY EXPERIENCE
GROUPS WITH LESS THAN 1,000 EMPLOYEES EXPOSED
1972-74 POLICY YEARS' EXPERIENCE, BY PLAN

Plan	Nonmaternity and Maternity Combined Experience*				Nonmaternity and Maternity Separate Experience*						
	No. Experience Units	Weekly Indemnity Exposed (000)	Actual Claims (000)	Ratio of Actual to 1947-49 Weekly Indemnity Tabular	No. Experience Units	Weekly Indemnity Exposed (000)	Actual Claims		Ratio of Actual to 1947-49 Weekly Indemnity Tabular		
							Nonmaternity (000)	Maternity (000)	Nonmaternity	Maternity	Combined
	Plans with 6 Weeks' Maternity Benefit.										
13-week:											
4th-day sickness.	601	3,066	1,892	89%	381	2,133	1,433	39	104%	29%	97%
8th-day sickness.	1,995	12,054	8,351	107	1,197	7,768	5,141	296	114	39	103
Total.....	2,596	15,120	10,243	103%	1,578	9,901	6,574	335	111%	38%	102%
26-week:											
4th-day sickness.	238	2,911	2,699	123%	182	1,853	1,709	24	117%	25%	111%
8th-day sickness.	1,546	17,889	15,412	116	917	9,863	9,233	296	132	42	124
Total.....	1,784	20,800	18,111	117%	1,099	11,716	10,942	320	129%	40%	122%
	Plans with No Maternity Benefit										
13-week:											
4th-day sickness.	.....	.....	.....	.....	318	1,933	1,344	.....	109%	.....	.....
8th-day sickness.	.....	.....	.....	.....	4,625	22,842	13,427	.....	103	.....	.....
Total.....	.....	.....	.....	.....	4,943	24,775	14,771	.....	103%	.....	.....
26-week:											
4th-day sickness.	.....	.....	.....	.....	340	3,474	2,799	.....	100%	.....	.....
8th-day sickness.	.....	.....	.....	.....	5,734	33,576	24,174	.....	99	.....	.....
Total.....	.....	.....	.....	.....	6,074	37,050	26,973	.....	99%	.....	.....

* The separate experience exposure is less than the combined experience exposure because separate experience is not available for all groups.

TABLE 3—GROUP WEEKLY INDEMNITY EXPERIENCE
GROUPS WITH LESS THAN 1,000 EMPLOYEES EXPOSED
1970–74 POLICY YEARS' EXPERIENCE, BY PLAN

PLAN	RATIOS OF ACTUAL TO 1941–51 TABULAR FOR POLICY YEAR ENDING IN:				
	1970	1971	1972	1973	1974
	Plans with 6 Weeks' Maternity Benefit				
Nonmaternity and maternity combined experience:					
13-week:					
4th-day sickness	91%	92%	93%	89%	70%
8th-day sickness	112	108	103	104	99
Total	103%	105%	101%	101%	94%
26-week:					
4th-day sickness	118%	121%	110%	110%	127%
8th-day sickness	118	122	120	107	120
Total	118%	122%	118%	108%	122%
Nonmaternity and maternity separate experience:*					
Nonmaternity:					
13-week:					
4th-day sickness	106%	99%	103%	104%	99%
8th-day sickness	121	113	113	115	117
Total	117%	110%	111%	112%	113%
26-week:					
4th-day sickness	120%	134%	120%	115%	102%
8th-day sickness	127	133	133	129	150
Total	125%	133%	131%	126%	143%
Maternity (all plans)	51%	51%	40%	37%	42%
Combined:					
13-week:					
4th-day sickness	100%	96%	97%	97%	95%
8th-day sickness	112	108	102	104	109
Total	109%	103%	101%	102%	106%
26-week:					
4th-day sickness	113%	124%	114%	109%	99%
8th-day sickness	120	126	125	121	138
Total	119%	126%	123%	119%	135%
	Plans with No Maternity Benefit				
13-week:					
4th-day sickness	107%	103%	97%	105%	119%
8th-day sickness	105	102	99	100	106
Total	106%	103%	99%	100%	107%
26-week:					
4th-day sickness	91%	91%	87%	105%	113%
8th-day sickness	94	105	104	93	101
Total	91%	103%	102%	99%	103

* The nonmaternity and maternity separate experience is also included in the nonmaternity and maternity combined experience.

TABLE 3A

GROUP WEEKLY INDEMNITY EXPERIENCE
GROUPS WITH LESS THAN 1,000 EMPLOYEES EXPOSED
1972–74 POLICY YEARS' EXPERIENCE, BY PLAN

PLAN	RATIOS OF ACTUAL TO 1957–59 TABULAR FOR POLICY YEAR ENDING IN:		
	1972	1973	1974
	Plans with 6 Weeks' Maternity Benefit		
Nonmaternity and maternity combined experience:			
13-week:			
4th-day sickness	77%	64%	70%
8th-day sickness	102	104	99
Total	97%	95%	94%
26-week:			
4th-day sickness	93%	92%	127%
8th-day sickness	112	92	120
Total	110%	92%	122%
Nonmaternity and maternity separate experience:*			
Nonmaternity:			
13-week:			
4th-day sickness	85%	83%	99%
8th-day sickness	107	109	117
Total	104%	104%	113%
26-week:			
4th-day sickness	103%	65%	102%
8th-day sickness	136	98	130
Total	130%	89%	143%
Maternity (all plans)	27%	22%	42%
Combined:			
13-week:			
4th-day sickness	81%	76%	95%
8th-day sickness	93	98	109
Total	91%	95%	106%
26-week:			
4th-day sickness	98%	64%	99%
8th-day sickness	129	92	135
Total	124%	83%	133%
	Plans with No Maternity Benefit		
13-week:			
4th-day sickness	96%	107%	119%
8th-day sickness	102	100	106
Total	101%	101%	107%
26-week:			
4th-day sickness	91%	109%	115%
8th-day sickness	89	97	101
Total	89%	98%	103%

* The nonmaternity and maternity separate experience is also included in the nonmaternity and maternity combined experience.

experience to 1974 experience, we constructed Table 3A to see whether these changes represented a trend or whether they could be explained by the change in the exposure distribution caused by the inability of our largest contributor to provide 1974 experience. This analysis was not particularly conclusive. In certain cells, especially the thirteen-week non-maternity and maternity combined, the Table 3A experience is fairly stable from year to year. Table 3A shows a great deal of variation from year to year in most of the other plan cells. This is difficult to explain,

TABLE 4

GROUP WEEKLY INDEMNITY EXPERIENCE
ALL SIZE GROUPS
COMBINED 1972–74 POLICY YEARS' EXPERIENCE,
BY SIZE OF EXPERIENCE UNIT

Size	No. Experience Units	Weekly Indemnity Exposed (000)	Actual Claims Including Maternity (000)	Ratio of Actual to 1967–69 Weekly Indemnity Tabular
	Plans with 6 Weeks' Maternity Benefit			
<50 lives	1,334	1,930	1,230	95%
50–99	1,117	4,109	2,775	99
100–249	1,151	9,784	7,760	112
250–499	507	11,275	8,830	110
500–999	241	8,811	7,759	119
Total <1,000	4,350	35,920	28,354	111%
1,000 or more	103	14,864	12,673	115%
Grand total	4,453	50,784	41,027	112%
	Plans with No Maternity Benefit			
<50 lives	4,930	8,664	5,105	90%
50–99	2,877	11,414	6,750	81
100–249	2,217	18,815	15,035	107
250–499	715	12,971	9,523	113
500–999	258	9,961	7,321	105
Total <1,000	11,017	61,825	41,744	100%
1,000 or more	163	22,856	16,173	97%
Grand total	11,180	84,681	57,917	99%

but the widest variations occur in cells with very small exposure. A great deal of caution should be used in attempting to draw conclusions about 1973-74 trends in weekly indemnity experience because the effect of the changing exposure base is not clear.

Table 4 appears virtually the same as in the 1971-73 study and continues to show that ratios tend to increase as the size of the group increases, except that jumbo experience for plans with no maternity benefits is slightly better than nonjumbo experience.

Table 5 shows that, for nonjumbo groups with no maternity benefit, with all benefit periods combined, and with more than 10 per cent female, there is a tendency for the ratios to increase as the female percentage increases. The table also shows a relatively higher ratio for groups with less than 11 per cent female. It is worth noting, however, that 40 per cent of the exposures fall in the "less than 11 per cent female" category. It is possible that this represents a coding inaccuracy. If groups of unknown per cent female distribution have in error been coded as "less than 11 per cent female" when, in fact, a higher classification is applicable, the actual-to-tabular ratio for these cases would be high if normal experience prevailed. The actual claims would reflect the higher cost associated with

TABLE 5

GROUP WEEKLY INDEMNITY EXPERIENCE
GROUPS WITH LESS THAN 1,000 EMPLOYEES EXPOSED
1972-74 POLICY YEARS' EXPERIENCE, BY FEMALE PER CENT
PLANS WITH NO MATERNITY BENEFIT, ALL BENEFIT PERIODS COMBINED

Female Per Cent	No. Experience Units	Weekly Indemnity Exposed (000)	Actual Claims (000)	Ratio of Actual to 1967-69 Weekly Indemnity Tabular
<11%	4,625	24,648	16,301	102%
11-20%	1,967	10,368	5,900	90
21-30%	1,137	7,126	4,440	94
31-40%	899	5,724	3,874	100
41-50%	679	3,900	2,813	101
51-60%	499	3,158	2,393	105
61-70%	416	2,530	2,223	116
71-80%	330	1,886	1,606	108
81-90%	321	1,877	1,698	113
91-100%	134	608	426	122
Total	11,017	61,825	41,744	100%

TABLE 6

COMBINED 1970, 1971, 1972, 1973, AND 1974 POLICY YEARS' EXPERIENCE
INDUSTRY ANALYSIS

Industry Code	Industry Description	United States Group Weekly Indemnity Insurance					
		Experience Units of All Size Groups All Plans, Combined Nonmaternity and Maternity Experience					Experience Units with Less than 1,440 Lives Exposed
		Number of Experience Units	Actual Weekly Indemnity Exposure for Industry ($000)	Ratio of Exposure for Ind. to Total Exposure	Ratio of Actual to Tabular Claims	Ratio of Ind. A/T to Aggregate A/T	Ratio of Ind. A/T to Aggregate A/T*
Total	All Industries	30,346	247,723	100.0%	107%	100%	100%
	Agriculture, forestry, and fisheries:						
01	Agricultural production	87	206	0.1%	90%	84%	86%
02	Agricultural services, hunting, trapping	87	203	0.1	69	64	66
08	Forestry	11	20	0.1	(430)	(402)	(410)
09	Fisheries	5	20	.....	(136)	(116)	(119)
	Mining:						
10	Metal mining	87	1,254	0.5	140	130	97
11	Anthracite mining	310	2,182	0.9	130	122	84
12	Bituminous coal and lignite mining	132	610	0.3	85	79	81
13	Crude petroleum and natural gas	152	634	0.3	39	36	66
14	Mining and quarrying of nonmetallic minerals, except fuels	219	1,344	0.6	104	97	99
	Contract construction:						
15	Building construction—general contractors	209	1,336	0.6	165	154	70
16	Construction other than building construction—general contractors	215	1,294	0.5	70	65	74
17	Construction—special trade contractors	534	2,383	1.0	90	84	86
	Manufacturing:						
19	Ordnance and accessories	33	692	0.3	121	113	113
20	Food and kindred products	1,403	10,369	4.2	97	91	96
21	Tobacco manufactures	96	1,072	0.4	93	87	121
22	Textile mill products	713	5,911	2.4	117	109	110
23	Apparel and other finished products made from fabrics and similar materials	453	2,330	1.0	107	100	104
24	Lumber and wood products, except furniture	597	3,679	1.5	99	93	88
25	Furniture and fixtures	543	3,515	1.4	102	95	97
26	Paper and allied products	1,120	11,972	4.9	131	123	116
27	Printing, publishing, and allied industries	1,601	9,230	3.4	95	89	90
28	Chemicals and allied products	650	11,479	5.1	86	80	94
29	Petroleum refining and related industries	131	1,[illegible]	0.8	87	81	88
30	Rubber and miscellaneous plastics products	323	3,098	1.7	131	122	124
31	Leather and leather products	286	2,153	0.9	120	112	111
32	Stone, clay, glass, and concrete products	824	5,306	2.3	143	134	116
33	Primary metal industries	1,113	11,[illegible]	4.7	143	134	129
34	Fabricated metal products, except ordnance, machinery, and transportation equipment	2,423	19,0[illegible]	7.8	122	114	119
35	Machinery, except electrical	2,600	26,716	11.0	116	108	104
36	Electrical machinery, equipment, and supplies	1,339	22,329	9.2	117	109	101
37	Transportation equipment	879	10,153	4.2	130	122	121
38	Professional, scientific, and controlling instruments; photographic and optical goods; watches and clocks	414	4,043	1.7	96	90	99
39	Miscellaneous manufacturing industries	514	3,851	1.6	114	107	103
	Transportation, communication, electric, gas, and sanitary services:						
41	Railroad transportation	31	320	0.1	(110)	(103)	(103)
42	Local and suburban transit and interurban passenger transportation	215	1,811	0.8	107	100	110
42	Motor freight transportation and warehousing	661	2,342	1.0	69	64	71
44	Water transportation	99	413	0.2	106	99	93

* The aggregate A/T for smaller size groups is 103 per cent. Ratios for industries with less than 50 experience units and less than 0.3 per cent of total exposure are shown in parentheses.

TABLE 6—*Continued*

Industry Code	Industry Description	United States Group Weekly Indemnity Insurance					
		Experience Units of All Size Groups All Plans, Combined Nonmaternity and Maternity Experience					Experience Units with Less than 1,000 Lives Exposed
		Number of Experience Units	Actual Weekly Indemnity Exposure for Industry (000)	Ratio of Exposure for Ind. to Total Exposure	Ratio of Actual to Tabular Claims	Ratio of Ind. A/T to Aggregate A/T	Ratio of Ind. A/T to Aggregate A/T
	Transportation, communication, electric, gas, and sanitary service—Continued						
45	Transportation by air	63	371	0.3%	37%	33%	34%
46	Pipeline transportation	5	16	.....	(73)	(23)	(24)
47	Transportation services	71	384	0.2	100	92	95
48	Communication	131	759	0.3	63	59	63
49	Electric, gas, and sanitary services	155	1,453	0.6	97	91	93
	Wholesale and retail trade:						
50	Wholesale trade	2,419	10,774	4.4	70	63	62
52	Building materials, hardware, and farm equipment dealers	255	783	0.3	72	67	69
53	Retail trade—general merchandise	364	9,993	4.1	71	66	85
54	Food stores	402	1,854	0.8	101	94	86
55	Automotive dealers and gasoline service stations	1,170	3,406	1.4	81	76	73
56	Apparel and accessory stores	207	1,623	0.7	77	72	80
57	Furniture, home furnishings, and equipment stores	230	904	0.4	88	82	84
58	Eating and drinking places	278	934	0.4	110	103	104
59	Miscellaneous retail stores	332	1,283	0.5	85	79	84
	Finance, insurance, and real estate:						
60	Banking	136	390	0.2	50	47	44
61	Credit agencies other than banks	120	460	0.2	82	77	78
62	Security and commodity brokers, dealers, exchanges, and services	38	160	0.1	(65)	(61)	(62)
63	Insurance carriers	103	1,028	0.4	103	96	91
64	Insurance agents, brokers, and service	32	304	0.1	(61)	(57)	(53)
65	Real estate	138	553	0.2	91	85	87
66	Combinations of real estate, insurance, loans, and law offices	9	10	.....	(53)	(49)	(30)
67	Holding and other investment companies	48	323	0.1	(100)	(93)	(95)
	Services:						
70	Hotels, rooming houses, camps, and other lodging places	139	1,209	0.5	93	87	90
72	Personal services	258	863	0.2	85	79	81
73	Miscellaneous business services	433	1,788	0.7	70	65	64
75	Automobile repair, automobile services, and garages	105	574	0.2	106	99	101
76	Miscellaneous repair services	103	420	0.2	127	117	117
78	Motion pictures	23	311	0.2	(73)	(68)	(71)
79	Amusement and recreation services, except motion pictures	94	326	0.1	93	87	89
80	Medical and other health services	331	4,767	1.8	82	77	94
81	Legal services	42	196	0.1	(75)	(70)	(71)
82	Educational services	101	1,241	0.5	79	74	82
84	Museums, art galleries, botanical and zoological gardens	11	65	.....	(112)	(105)	(125)
86	Nonprofit membership organizations	191	1,429	0.6	82	77	81
89	Private households	3	8	.....	(82)	(77)	(71)
89	Miscellaneous services	217	1,036	0.4	68	64	64
	Government:						
91	Federal government	69	388	0.2	92	86	84
92	State government	41	891	0.4	60	56	58
93	Local government	497	2,466	1.0	92	86	83
94	International government	13	51	.....	(96)	(90)	(91)
Total	All industries listed above	30,262	242,236	99.3%	108%	100%	100%
	All other industries	84	494	0.2%	104%	97%	86%

* The aggregate A/T for smaller size groups is 105 per cent. Ratios for industries with less than 50 experience units and less than 0.3 per cent of total exposure are shown in parentheses.

female risks, and the tabular would erroneously reflect the more favorable experience expected for male risks.

This year we have compiled a study of actual-to-tabular claim ratios by industry based on the years 1970–74. This is published only once every five years. The industry experience analysis in Table 6 is shown by ratio of actual to tabular for all size groups and by industry actual-to-tabular ratios compared with aggregate actual-to-tabular ratios for nonjumbo experience units. Among industries represented by either at least fifty experience units or 0.3 per cent of the total exposure, the range of variation of experience ratios by industry for all size groups extends from a low of 50 per cent for banking to a high of 165 per cent for building construction—general contractors. For nonjumbo units, banking was again the lowest, with a ratio that was 48 per cent of the average, while primary metal industries ranked highest at 129 per cent.

Generally, among industries with either fifty experience units or 0.3 per cent of the total exposure, the ratios did not vary substantially from those found in the experience period 1965–69. There were a few exceptions. In the all-size-group study, bituminous coal and lignite mining and local and suburban transit and interurban passenger transportation showed large decreases since the last study. Building construction—general contractors, stone, clay, glass and concrete products, credit agencies other than banks, automobile repair, automobile services, and garages and miscellaneous repair services all showed higher ratios.

Nonjumbo experience did not appear to be as volatile, and, among industries that had 1 per cent or more of the total exposures, there were no variations of great magnitude.

Care should be exercised in the use of the analysis by industry, because the industry actual-to-tabular ratios do not take account of possible variations by plan or by age and sex.

ATTACHMENT F

Personnel Management—
Policies and Practices
Report Bulletin 24
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Conducting a Wage and Salary Survey: How to Do It Yourself

No one has to convince you how helpful a wage and salary survey can be in setting up a good compensation program or in making determinations about a number of other salary-related personnel problems (pinpointing "weak" spots in your current program, for example). But perhaps you're not sure that a wage and salary survey can be done with a small staff and a limited budget. And if it can be done under these circumstances, how do you go about it?

Turn to NEW IDEAS ¶ 248 for a step-by-step guide to conducting your own wage and salary survey. Explanations and suggestions from two experienced personnel administrators tell you how to start your survey project, what kinds of survey methods you can use, what questions to ask in the survey (a questionnaire checklist is included), and how to use the survey information you collect.

Tip for you: You can also use the article as a training aid for personnel staffers who'll work with you on the survey.

Do Your Maternity Leave Policies Conform to EEOC Guidelines? Commission Decisions Offer Pointers

[¶ 24.1] How can you set up your maternity leave policies to comply with the laws banning sex discrimination? The Equal Employment Opportunity Commission says employers can't treat women as a class by

ALSO IN THIS ISSUE

Physical fitness programs: Antidote to white-collar woes? ..... ¶ 24.2
Your duty under OSHA: Don't ignore employees' violations ..... ¶ 24.3
Testing professionals issue book on test standards ..... ¶ 24.4
Court holds EEOC could look at company records ..... ¶ 24.5
Selective Service reminders ..... ¶ 24.6
EEOC amends guidelines on national origin discrimination ..... ¶ 24.7
Employee gets tax break for pre-retirement age sick pay ..... ¶ 24.8
More Monday holiday changes ..... ¶ 24.9
Company's offer of different job to vet ruled OK ..... ¶ 24.10
Employees cyclists get a place to hang their handlebars ..... ¶ 24.11
Company salutes inventive genius ..... ¶ 24.12
Coming Events ..... ¶ 24.13
How to conduct your own wage and salary survey ..... ¶ 248

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setting arbitrary leave dates for pregnant employees; your policy must treat women as individuals. The Supreme Court has supported this view [see ¶ 20.1]. And if you fire a pregnant woman (or force her to quit) because your leave policy is insufficient, or no leave is available, such termination violates the law unless you can show business necessity [see ¶ 2113]. Here are two decisions recently released by the EEOC that indicate an employer shouldn't have the same maternity leave policy for everyone, but probably should adapt his policy to the employee's specific job situation:

Job's physical requirements can determine leave date. An employee complained she'd been forced to go on maternity leave after the seventh month of pregnancy, although other employees had worked through the eighth month. The employee's doctor said she was able to work through the eighth month. The company doctor had originally agreed, but when he found the employee's job involved much more bending, lifting and climbing than he'd originally been aware of he recommended she take leave at the end of the seventh month. The EEOC found no violation: the company had treated the employee in a reasonable manner; she'd been evaluated on the basis of her own capacities and "not on the basis of any characteristics attributed to the group" [EEOC Decision No. 72-0372, 8-24-71].

Company must give extension of leave with preferred recall. An employee working as the only bookkeeper in a company's branch office claimed her employer had violated Title VII by denying her a two-month maternity leave of absence and discharging her. The company stated it had no leave policy (maternity or otherwise) for small branch offices. Further, leave for illness was granted only if an employee had accrued sick leave. Since 1961 the company had granted only one leave—to a receptionist who'd been able to find a suitable temporary replacement. The company maintained that a full-time bookkeeper was absolutely necessary to its operation and it was impractical (because of the skilled nature of the work and the training period required) to find a satisfactory temporary replacement.

DECISION→ The EEOC held the company had violated the law by discharging the bookkeeper because of her "sex-related necessity" to take a leave of absence from her job. Instead of firing her, the employer should have given her "extension of leave with preferred recall." The Commission recognized that the nature of the company's business was such that "employees of either sex who request extended leave can be afforded only limited accommodation." But it further stated: "The reasonable requirements of the ... business preclude a guarantee of reinstatement, but do not preclude the maintenance of a preferred recall list." EEOC concluded that by firing the employee, the company made "recall impossible and rehire speculative" [EEOC Decision No. 71-2309, 5-28-71].

SIGNIFICANCE→ This decision is especially important to small companies, where every employee may be "indispensable" and there's not enough manpower to take over when someone's on temporary leave. This case indicates it's permissible to hire a replacement if the company can't function efficiently otherwise—but the employee who's being replaced must be placed on a preferred recall list to make future reinstatement, if not a guarantee, at least a possibility.

ATTACHED

For latest P-H survey results on changes in maternity leave policies, see NEW IDEAS ¶ 230. More on maternity leave is at ¶ 9714. The Civil Rights Law and EEOC guidelines on sex discrimination are at ¶ 2113.

P-H Survey: Big Changes in Maternity Leave Policies

[¶230] It was once the exception, but now it's the rule: Companies must pro... maternity leave to comply with Title VII of the Civil Rights Law. The E... Employment Opportunity Commission says employers must treat disabilities cau... or contributed to by pregnancy as temporary disabilities; must grant leaves of absence ... pregnant employees; and must reinstate them without loss of seniority and oth... benefits when they return to work after pregnancy.

The new EEOC guidelines have spurred sweeping changes in maternity lea... policies, and those changes are evident in the latest P-H survey on this importa... subject. The P-H research staff, in cooperation with the American Society f... Personnel Administration, polled 929 companies across the country to pinpoint re... trends in maternity leave policies. Results show that over half the firms have alre... changed their policies to conform to EEOC guidelines, and almost one-four... anticipate making further changes. Check to see how your policies stack up against th... new standards:

➢ COMPARISON HIGHLIGHTS CHANGES → In 1965, just after Title V... took effect, P-H researchers asked over 1,000 employers about their maternity le... policies. Findings: Only 2 out of 5 offices in the 1965 survey said they grant... maternity leaves. Three-fourths of the plants had leave policies, but most of th... required the employee to stop working early in pregnancy; less than 20% allo... the pregnant employee herself to decide how long she wanted to continue work... But EEOC guidelines on sex discrimination prompted many companies to tak... second look at their policies. In 1972, shortly after the guidelines were iss... another P-H survey on maternity leave found three-fourths of all respondents h... adopted maternity leave policies; 60% allowed the employee or her physician ... decide how long she could stay on the job.

➢ NEW SURVEY DIFFERENT → Further changes in maternity leave poli... are revealed in our current survey. According to our latest figures, 9 out of ... respondents among both offices and plants have formal maternity leave provisio...

P-H Chart I: Present Policies for Maternity Leaves

	Manufacturers	Public Utilities	Hospitals	Banks	Insurance	Other Offices	Retail Stores	R&D Firms	T...
Give maternity leave; have formal policy	90.0%	90.0%	93.2%	91.2%	92.0%	78.6%	87.5%	89.4%	89...
No formal policy as such	6.5	3.3	5.5	6.9	2.7	16.1	12.5	5.3	5...
Have not given maternity leaves up to now. .	3.5	6.7	1.3	1.9	5.3	5.3	--	5.3	1...

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P-H Chart II: Eligibility Requirements for Maternity Leave

	Manufacturers	Public Utilities	Hospitals	Banks	Insurance	Other Offices	Retail Stores	R&D Firms	Total
Length of service requirement	29.5%	33.3%	52.1%	29.4%	36.0%	21.4%	42.5%	26.3%	33.2%
Employee must be married	7.0	6.7	1.4	2.9	5.3	—	—	5.3	4.2%
Other qualifications	5.5	—	12.3	4.9	10.7	8.9	2.5	5.3	6.4
No special qualifications	55.0	60.0	34.2	62.8	48.0	69.7	55.0	63.1	56.2

8 out of 10 let the employee or her doctor decide when she should quit working. (For detailed breakdowns, see P-H Chart I.)

Eligibility requirements. At one-third of the responding companies—29% of the offices and 36% of the plants—length of service is still a prerequisite for maternity leave (see P-H Chart II). The most commonly specified seniority requirements were six months and one year; most others were routine probationary periods (usually three months or less). The most stringent standards were found at hospitals: Over half reported length-of-service requirements, usually one year.

Are there other prerequisites for maternity leave? Not many. A number of companies said only regular, full-time employees are eligible for maternity leave—but this requirement is so widely applied to leaves generally, most respondents just didn't bother to mention it. At some companies the personnel department reviews each request individually, granting maternity leave only when work records are satisfactory. (A denial of leave could be a constructive discharge.)

➤ MATRIMONY DOESN'T MATTER ➤ Only 4.2% of all respondents—fewer than 1 in 20—make maternity leave conditional upon marital status. Manufacturers (7.0%) and public utilities (6.7%) are strictest in this regard. But at all the retail stores and "other office" firms we heard from, maternity leave policies apply equally to single and married employees, in accordance with EEOC guidelines.

How long can a pregnant employee keep working? Like women and jobs, pregnancies differ. That's why most companies we surveyed allow the employee or her physician to decide how long it's safe for her to continue working. Only 17.8% of the employers in our survey set the employee's departure date themselves. Among those that do, the cutoff is never earlier than the fifth month of pregnancy; almost 8 out of 10 wait until the sixth, seventh or eighth month. See P-H Chart III for details.

➤ RETAILERS ARE AN EXCEPTION ➤ Bending, reaching, lifting, walking, meeting and selling to the public—they're all part of the daily routine at retail stores. With their staffers' safety and personal appearance in mind, 55% of the retail stores we surveyed set the date pregnant employees must quit working. Only rarely are stores' women personnel allowed to work beyond the sixth month of pregnancy; 8 out of 10 retailers said they set the cutoff date in the fifth or sixth

month, or on a case-by-case basis. (Or they may arrange a transfer to a more appropriate department—such as maternity clothes.)

How do you know whether it's safe for her to work? Despite many differences in their maternity leave arrangements, almost all companies we surveyed agree on one thing: It takes a doctor to judge on-the-job risks to a pregnant employee's health and safety. So almost 9 out of 10 firms require pregnant employees to get a written medical OK to continue working. (See P-H Chart IV.)

About three-fourths of the respondents ask for a note from the employee's personal physician noting the expected birth-date and how long the employee can safely continue working; about 9% of the firms have their own medical department issue the OK. Just under 7% ask for a medical release only if the employee is ill or works in a hazardous job. About as many said they *never* require an OK—usually office firms where many jobs are safe and sedentary. And a handful of companies impose such "special" requirements as periodic medical checks or OK's by *both* the company medical staff and the employee's own doctor.

COULD SHE SWITCH JOBS TEMPORARILY? When we asked survey respondents if their pregnant employees were sometimes transferred to safer or easier jobs, about half of them told us the question had never come up at their companies. But the other half had considered the matter before—and had usually decided against it. Only 17% said they occasionally arrange transfers.

What about paying employees while they're absent during pregnancy? About three-fourths of the respondents apply their usual absence rules to pregnant employees, and an additional 8% never give sick pay, regardless of cause. But at 17% of the firms polled, sick pay is provided only for absences not related to pregnancy—although this practice would appear to violate EEOC guidelines (see page 462). A few companies said they pay sick leave benefits only for pathological pregnancies—those with special medical complications.

HOW MUCH SICK PAY? IT DEPENDS Some companies tailor their maternity leave allowances to match the disability benefits in their group insurance plan. Others tie in their allowances to state disability benefit programs—or plan to if court decisions point in that direction. (But note: State programs differ; in some there's a benefit disqualification for pregnancy-related disabilities. See NEW IT

P-H Chart III: Who Decides How Long Pregnant Employee May Continue Work?

	Manufacturers	Public Utilities	Hospitals	Banks	Insurance	Other Offices	Retail Stores	R & D Firms
Employee's physician	79.5%	16.7%	86.3%	85.3%	84.0%	73.2%	25.0%	73.7%
Company sets date	17.0	70.0	9.6	5.9	12.0	3.6	55.0	21.0
Individual employee	3.5	13.3	4.1	8.8	4.0	23.2	20.0	5.3

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P-H Chart IV: How Do You Determine Employee's Ability to Work Safely?

	Manufacturers	Public Utilities	Hospitals	Banks	Insurance	Other Offices	Retail Stores	R & D Firms	Total
OK from personal physician	74.5%	80.0%	65.3%	80.4%	80.0%	73.2%	85.0%	73.8%	76.1%
OK from medical department	14.0	6.7	15.1	2.0	9.4	1.8	—	10.6	8.9
OK not always required	4.5	10.0	11.1	9.8	5.3	8.9	2.9	—	6.7
Other special requirement	3.0	3.3	4.0	0.9	—	—	—	—	1.8
OK never required	4.0	—	4.0	6.9	5.3	16.1	12.1	10.6	6.5

¶196.) Overall, about one-fifth (21%) of the firms we surveyed said they give sick pay to employees out on maternity leave.

The duration of maternity leave benefits varies quite a bit. Just over half the employers that grant paid maternity leaves said they pay for six weeks or more *before* delivery; the rest pay from one to five weeks before the birth date. *After* the baby is born, two-thirds of these companies grant another six weeks or more of paid maternity leave; the other third pay from two to four weeks after delivery. Here's a sampling of plans and comments:

- "We grant a maximum of five paid days per year, accruable to a maximum of 20 days. We see no problem in granting it as long as it has been earned. While a pregnant (or ill) employee is on leave, she does not accrue additional sick leave credits." [Bank, Minnesota]
- "We've found our policy for maternity leaves to be very acceptable. If the employee returns to work within a six-month maximum time frame she automatically gets credited not only for back sick leave, but also for vacation *that has accrued during maternity leave*. In other words, once the employee returns to work, for all practical purposes it's as if she never left. Also, during maternity leave the bank continues to pay her retirement and the employee, if under family coverage, can maintain all of her insurance coverage by making a nominal payment each month." [Bank, Florida]
- "Our policy is designed to eliminate any difference in handling military leave, maternity leave, and extended leave without pay for other reasons. Present leaves without pay policies encompass all three situations." [Insurance company, Washington, D.C.]
- "We pay salary in full for employee on sick leave until he or she is able to return to work or is eligible for long-term disability. (There is a six-month waiting period for long-term disability.)" [Bank, New Mexico]

• "We've been 'burned' three times paying sick pay to women who did not choo to return to work after leave expiration. This seems contrary to 'income continuati aspect of medical disability pay concepts. So we're planning to change our payme method for all sick leaves." [Insurance company, Connecticut]

• "Accumulated sick leave is paid prior to a maternity leave of absence [Manufacturer, Florida]

• "We have a very good and generous plan—unfortunately, it is sometimes abus We pay 60% of salary after the third day out." [Manufacturer, Georgia]

☞ EARLY TERMINATION → About three-fourths of the firms in the surv had never encountered problems with pregnant employees staying out frequent *before* taking maternity leave. But most of the ones that *had* said they ask tha employees to start maternity leave earlier than originally scheduled; only 9% sa they *never* ask employees to terminate early.

How long a leave do they need? Just two years ago, most of the companies w surveyed set specific limits on maternity leave. But this practice seems to be on it wane: Only 38% of this year's respondents said they limit the total length of the employees' maternity leave, and 40% limit the amounts of leave time before and aft childbirth; 6 out of 10 firms let the individual employee choose the appropriate tim to leave and return to work. The shift to case-by-case determinations is in accordan with this—

☞ IMPORTANT POINT → The EEOC holds that employers can't treat wom as a class by setting arbitrary leave dates for pregnant employees. Many compa set the dates for maternity leaves—but build in plenty of leeway (for example, the may set a late cutoff date before delivery, but allow employees to terminate soo if they want to). That way, they can accommodate individual needs but s maintain clear-cut policies on maternity leave. *Your* policy should take individ capacities, personal medical safety and willingness to continue working i account

Here's how maternity leaves shape up at companies that set limits on them:

▻ *Earliest return dates.* Of the companies that limit employees' return-to-w date, 6 out of 10 say it must be no sooner than four or six weeks after childbirth; t other firms set the date at two, two and one-half or three months. (*Note:* A numbe states formerly had laws prohibiting employment of women four to six weeks aft delivery; but some of these laws, along with much other protective legislation tend to conflict with Title VII, have since been repealed. Check your state law on th point; see also NEW IDEAS ¶196 for information on Title VII's impact on st unemployment benefits for pregnant employees.)

▻ *Latest return dates.* Just over half the firms that limit leave time agree that t months is the longest they can wait for an employee to return to work after her c is born. Two months is the limit at 3 out of 10 firms; and about one-fourth said l can last up to six months after delivery. A handful of companies mentioned 1 months or one year after childbirth as their back-to-work deadline.

▻ *Total leave length:* Almost half the companies that limit the *total* length of t

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EMPLOYMENT POLICIES RELATING TO PREGNANCY AND CHILDBIRTH*

(a) A written or unwritten employment policy or practice which excludes from employment applicants or employees because of pregnancy is in prima facie violation of Title VII.

(b) Disabilities caused or contributed to by pregnancy, miscarriage, abortion, childbirth, and recovery therefrom are, for all job-related purposes, temporary disabilities and should be treated as such under any health or temporary disability insurance or sick leave plan available in connection with employment. Written and unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement, and payment under any health or temporary disability insurance or sick leave plan, formal or informal, shall be applied to disability due to pregnancy or childbirth on the same terms and conditions as they are applied to other temporary disabilities.

(c) Where the termination of an employee who is temporarily disabled is caused by an employment policy under which insufficient or no leave is available, such a termination violates the Act if it has a disparate impact on employees of one sex and is not justified by business necessity.

*37 F.R. 6835, *eff.* 4-5-72.

employees' maternity leaves cite six months as their maximum; another one-fourth of these firms allow 10- or 12-month leaves, and about as many grant three to five months. And a handful of employers said they let maternity leaves last up to two years. Here are some sample plans from companies that spelled out their maternity leave limitations:

- "Generally, a six-month optional leave is available if a pregnant employee requests it. Longer periods are granted if necessary when illness or special problems complicate the pregnancy. Beyond six months, the employee signs an agreement with the company. Maternity leave is treated like any other leave of absence at our firm. If desired, the employee may continue working as long as her doctor allows, and may return as soon after termination of pregnancy as her doctor recommends." [Manufacturer, Oregon]
- "Time limits on working before and after delivery were eliminated and we placed the liability on the employee and her doctor to determine when she should cease working and when she could return to work. We grant up to six months' maternity leave of absence on request." [Research and development company, California]
- "A return to work no sooner than two months after delivery is the norm at our firm. To come back sooner, the employee must obtain a release from her physician." [Office firm, Illinois]
- "We ordinarily limit maternity leave to two months beyond childbirth, but would extend it if medical problems occurred from the birth. This would have to be supported by a doctor's statement." [Insurance company, Indiana]

● "A maternity leave of absence may last up to four months. If more time needed, the employee may transfer to a medical leave of absence, but she must ob a certificate of disability." [Hospital, Idaho]

● "We grant the same amount of leave time for maternity as for other disabili one month for each year of service. A pregnant employee is allowed to work up delivery time, doctor permitting. After one year of service, for example, she gets month of leave time; if she's unable to return to work after that time, she's remov from the payroll. She's rehired when she's able to return." [Manufacturer, Californ

☞ HOW LONG IS "LONG ENOUGH"? → It's still not clear just what reasonable in limiting maternity leaves. But the EEOC guidelines specify that company policy acts to force pregnant employees to quit because leave provisi are insufficient (or if no leave is available), the policy violates Title VII. . . "if it h a disparate affect on employees of one sex and is not justified by busine necessity." Where does a company's convenience end and "business necessity begin? It's hard to tell. But comparison with previous P-H surveys shows discernible trend toward *liberalized* maternity leave benefits. Many experts sugge flexibility is the order of the day: As long as some women want to work up to t date of delivery and want to return to work the moment they're physically abl (while other women want to take off anywhere from six months to a year), th employer will likely be expected to accommodate their individual needs.

There'll be some changes made. The EEOC guidelines have spurred 58% of t survey respondents–including three-fourths of the banks and 8 out of 10 insuran offices–to revise their maternity leave policies. An additional 22% plan to mak further changes, and 38% are considering this course of action. Why? Here are some o the reasons mentioned most often:

▷ *Leaves were unpaid.* The most frequent policy change reported is the switch t *paid* maternity leaves. Many firms told us their former policies included paid sic leave, but no pay for maternity leave; most of these companies said they now pa accrued sick pay to employees on maternity leave. Many have also dropped their s length-of-service requirements for maternity leave payments. Sample comments:

● "We have eliminated the length-of-service requirement and company-set limi on how long a pregnant employee may work and when she can return after childbirt we're also considering paying unused sick leave." [Research and development com pany, Washington, D.C.]

● "There's been a 180-degree turnaround in our policy: We now pay for maternity leaves of absence." [Hospital, Missouri]

▷ *Leaves were too short–or too long.* When EEOC guidelines prompted companies across the country to reassess their maternity leave policies, many of the firms w surveyed extended their maternity leave limits as a result. But a number of other *shortened* the minimum length of their maternity leaves, in effect, by lifting the mandatory termination date before delivery and the return date afterwards.

● "We've always granted maternity leaves, but now we've extended the maximum allowable length. No problems so far." [Hospital, Texas]

● "Time limits on working before and after delivery have been eliminated, and

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PII CHECKLIST: HOW TO REVIEW YOUR MATERNITY LEAVE POLICIES

Survey findings suggest that many companies' present policies would not conform to EEOC guidelines [see box on page 462]. The following checklist will help you assess your own company's policies and identify problem areas that may need revision or further consideration.

	Yes	No
1. Do you grant maternity leaves to all employees who request one? (You can't require pregnant employees to resign.)	☐	☐
2. Can employees work as long as they are willing and able—with the *woman* (with her doctor's consent) deciding when she should begin her leave? (The *company* can't determine a cut-off date for *all* pregnant women because of presumed safety and health needs, supposed preferences of customers or other persons, or for other reasons—unless there's a demonstrable business necessity.)	☐	☐
3. Do you hire, train and make other personnel decisions without regard to an applicant's or employee's marital status, and without discriminating against an employee because she is (or might become) pregnant? (Inquiries about marital status, whether pregnant, family planning matters, and child care arrangements would probably be considered discriminatory.)	☐	☐
4. Do you provide time off for maternity leave on the same basis as for other employees' "temporary disabilities"?	☐	☐
5. Is the pregnant employee entitled to company benefits, the same as other employees? (Does she get paid absences, even while pregnant? Accrued vacation time? Insurance benefits equivalent to those available for the wives of male employees? Etc.)	☐	☐
6. Are pregnant employees' seniority and reinstatement rights (to the same or equivalent job) protected during maternity leave? (Company can't refuse to reinstate employee—unless there's a business necessity.)	☐	☐

we've placed the liability for the employee's safety on her and her doctor—they determine when she should return to work. Up to six months' maternity leave of absence is granted on request." [Research and development company, California]

▷ *Policies weren't coordinated.* There's a trend among the survey respondents toward bringing maternity leave policies into line with other personnel policies and practices. Firms are adjusting their maternity leave provisions with respect to other sick leave rules, sickness and accident insurance coverage, disability guidelines, seniority and other benefits.

- "We have a comprehensive disability policy, and are considering tying maternity leave in with our disability provisions." [Office firm, Indiana]
- "We will be adding long-term disability from the 31st day of maternity leave onwards. Sick leave will be used for the first 30 days, minus a three-day deductible period." [Hospital, South Carolina]

▷ WAIT-AND-SEE ATTITUDE WIDESPREAD → There are more changes to come: 6 out of 10 respondents said they plan to make further revisions in their maternity leave policies, or are holding this option open. What are they waiting for? *Court cases.* Some companies are keeping a close watch on relevant legal actions in

their own region; others are planning to base their maternity policies on a Supreme Court ruling yet to come.

What personnel execs are saying about maternity leaves. We asked the survey respondents for their frank opinions of the new maternity leave guidelines and trends. The verdict was far from unanimous, but most seem to be keeping a worried and watchful eye on their payroll budgets. Here's a representative sampling of the comments:

- "We believe the EEOC and other compliance agencies are too liberal. Pregnancy shouldn't be considered the same as an ulcer or broken leg; it is voluntary. If full benefits are paid as the EEOC and others seem to require, these special benefits are available only to women of child-bearing age." [Research and development company, Washington, D.C.]

- "We are taking a 'wait and see' posture regarding maternity leaves, watching several cases (not ours) in the courts. The big question is paid leaves." [Public utility, Kansas]

- "At our company, we think paid maternity leaves are a good thing—and long overdue." [Insurance company, Nebraska]

- "We feel that the law will soon require maternity leave to be treated the same as any other illness with regard to hospitalization and sick leave plans." [Manufacturer, Ohio]

- "We think our state disability ought to get involved before we finalize our plans. I don't think it will be costly for our company—the number of incidents is not significant." [Office firm, New York]

- "Now that our new plans are in effect, we have discovered that maternity leaves are no big problem—at least, not as big as we first thought they would be." [Public utility, Washington]

☞ FOR THE FACTS YOU NEED TO KNOW → Be sure to read your P-H Report Bulletins for late-breaking developments on maternity leave. See also ¶5417; 9714; NEW IDEAS ¶196 for more information. The Civil Rights Law and EEOC provisions barring sex discrimination are discussed at ¶2113.

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ATTACHMENT G

Personnel Management—
Policies and Practices
Report Bulletin 25

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P-H Survey: Maternity Leave Policies Due for a Change?

Apple pie and Motherhood used to be "safe" topics for soap box orators and politicians. Today, many businessmen wonder about Motherhood. *Reason:* Maternity leaves are posing some troublesome questions for them in the light of new guidelines from the EEOC.

Briefly, these regs say that disabilities connected with pregnancy and childbirth are "temporary" disabilities. As such, the same terms and conditions which apply to other temporary disabilities should be applied to them–including payments under sick leave and other insurance plans; commencement and duration of leave; availability of extensions; accrual of seniority; other benefits and privileges of employment; and rights to reinstatement.

How does this affect employers? To learn the answers, the P-H Research Staff surveyed typical plants, offices and hospitals. While the majority of these firms now grant maternity leaves, more than half of them will need to review and revise their policies before they'll be in compliance with the new guidelines.

For more details–and suggestions on how you can review and revise your maternity leave arrangements–turn to NEW IDEAS ¶230.

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P-H Survey: Maternity Leave Policies Due for a Change?

[¶230] Almost 3 out of 4 companies surveyed by the P-H research staff have a formal policy for providing maternity leaves. Another 20% will give a woman a leave of absence—but this decision is made on a case-by-case basis. (For instance, some firms have different policies for their plant and for their office workers.) And 5% of the respondents haven't granted any maternity leaves up to now.

However, more than half of the firms responding to this survey said they're contemplating making changes in their present policies—or at least are reviewing their arrangements. Here's why:

New guidelines issued by the Equal Employment Opportunity Commission underscore employers' obligation to grant maternity leaves (with rights to reinstatement) and to apply the same terms and conditions to disabilities connected with pregnancy and childbirth as would be applied to other "temporary disabilities" (see box on page 458 for text of the regulations).

Because of the impact of these guidelines on many employers' personnel policies—possibly *your* company's policies are also affected—we asked typical plants', offices' and hospitals' personnel execs to tell us how they deal with maternity leaves now and how they think their companies may be affected if changes are made in their present policies, to be in compliance with the new guidelines.

7-YEAR PROGRESS REPORT → Shortly after Title VII took effect, in 1965, P-H surveyed over 1,000 employers on this subject. The picture was quite different: Only two-fifths of the offices granted maternity leaves; three-fourths of the plants (mostly unionized) granted leaves. But they tended to require early "retirement" from the working scene—sometimes as soon as a pregnancy was "obvious." Few employers—less than 20%—allowed the pregnant employee herself to decide how long she wanted to continue working. And in many companies, if a woman wanted to return to work after the birth of her baby, she was considered a "new hire"—with no seniority rights.

Eligibility requirements. More than one-third of respondents (but nearly 2 out of 3 hospitals) set length-of-service requirements for employees wishing maternity leaves. Commonly, they require at least 6 months' service, with one year's service the next most frequently mentioned. (Hospitals, however, most commonly require one year's service.)

Other service requirements (3 months or less) generally appear to follow companies' normal arrangements for probationary employees who may not yet be participating in other company benefit programs. (At the other end of the scale, a few companies set a 9-month or 10-month service requirement (i.e., the employee could not have been pregnant when she was *hired;* this question is discussed in more detail below). No respondent required longer than 2 years' service, for a woman to qualify.

Several companies said only permanent, full-time employees were eligible for maternity leaves. And one company (where determinations have up to now been made on a case-by-case basis) said granting of leaves depended on "quality of work and personality." (If a leave was *denied,* this would appear to be a constructive discharge.)

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EMPLOYMENT POLICIES RELATING TO PREGNANCY AND CHILDBIRTH*

(a) A written or unwritten employment policy or practice which excludes from employment applicants or employees because of pregnancy is in prima facie violation of Title VII.

(b) Disabilities caused or contributed to by pregnancy, miscarriage, abortion, childbirth, and recovery therefrom are, for all job-related purposes, temporary disabilities and should be treated as such under any health or temporary disability insurance or sick leave plan available in connection with employment. Written and unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement, and payment under any health or temporary disability insurance or sick leave plan, formal or informal, shall be applied to disability due to pregnancy or childbirth on the same terms and conditions as they are applied to other temporary disabilities.

(c) Where the termination of an employee who is temporarily disabled is caused by an employment policy under which insufficient or no leave is available, such a termination violates the Act if it has a disparate impact on employees of one sex and is not justified by business necessity.

*37 F.R. 6835, eff. 4-5-72.

MARRIED OR SINGLE? → One out of 4 offices (but only a very small proportion of plants and hospitals) said employees had to be married to be eligible for maternity leaves.

How long can she continue working? Generally, it's the employee—or the employee with her doctor's O.K.—who decides. Over 60% of respondents recognize that jobs and people differ; the pregnant woman decides for herself when she needs a leave for her "temporary disability."

But in 35% of responding companies, the policies spell out how long a pregnant employee can continue working. Of those firms, 6 months is the most commonly-mentioned cut-off date, with 7 to 7-1/2 months a close second. Several office firms set an 8-month deadline. A number of plants say 4-5 months. Other special cases:

- 4 months [plant doctor advised against lifting, walking up stairs]
- 6 months for production employees; no limit for office employees
- 4 months if employee has no dispensation from her doctor; 8 months if her doctor says it's O.K. [office firm]
- 7 months, if employee is exposed to radiation [hospital]

How do you know whether it's safe for her to work? Most companies—no matter what their policy on how long a pregnant employee may continue on the job—want reassurance that the woman is physically able to work. Thus 3 out of 4 firms ask her to bring an O.K. from her personal doctor, with the expected date of birth noted. One company asks the employee to bring in an O.K. at 2-month intervals. About 1 in 8

companies require an O.K. from the company doctor; and 10% don't require a medical statement.

A small percentage of firms (10%) require an O.K. only if the employee is ill or works in a hazardous job. And 1 out of 6 companies have occasionally arranged transfers for pregnant employees to safer or easier jobs, if this was feasible.

What about pay for absences of employees during their pregnancy? Two out of three companies apply the same rules to pregnant employees as they apply to anyone else. However, about one-fourth of the firms will pay only for illnesses not connected with pregnancy. (One company pays for absences resulting from "complications"—but not for illnesses associated with a "normal" pregnancy.) The remaining firms don't pay for absences due to illness, whatever their cause. Do companies ask pregnant employees to stop work earlier than originally planned, if their attendance record is poor? Some 13% of respondents say Yes. Again, this decision may be made after consultation with the employee's doctor, to ensure that the job isn't endangering the employee's health.

Benefits and insurance. Two out of three respondents have temporary disability benefits plans. Of these, 54% provide coverage for pregnant employees.

What about medical and hospital insurance benefits covering maternity? Over 90% of respondents said their female employees were entitled to the same maternity benefits as the wives of male employees (provided of course that they carried a plan providing family-type coverage). Several exceptions were noted: If the female employee wasn't covered by a plan provided by her husband's employer (that is, there can be no duplication of coverage); unless she was head of household; and one firm said the protection was not offered to an individual who was unmarried. (A number of companies expected to be making changes in this area, probably in response to the new guidelines.)

☞ WHAT ABOUT ABUSES? ☜ About 10% of respondents said they had problems with pregnant employees who claimed unemployment benefits, when their employers considered them "unavailable for work." Most of the firms that found this a problem considered it worthwhile to contest such claims. The others apparently consider the claims justified, or they pay them, as the lesser of two nuisances. (*NOTE:* Of course, those companies allowing employees to work as long as they wish, rather than setting an arbitrary quitting date, aren't generally troubled with U.C. benefit claims.)

Some companies try to avoid hiring the problem. Even though the new guidelines say employers can't refuse to hire applicants who are pregnant, many companies routinely have been asking female applicants if they're pregnant. While 21% *ask*, several said this information was gleaned in the course of a pre-employment physical exam, rather than from personnel interviewers' or supervisors' questioning the applicants.

Do companies *hire* applicants who are pregnant? About 1 in 5 companies said Yes (the percentage was considerably higher for hospitals: 1 in 3 hospital executives will hire a pregnant applicant). Several respondents qualified their answers: it would depend on the job; they would hire someone who was pregnant as long as her

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condition wasn't too far advanced; they would hire a pregnant woman to fill a temporary job; or the decision might depend on other individual circumstances.

Suppose the pregnant applicant is unwed? Just over half the respondents said no matter: they would not disqualify her.

☞ FAMILY PLANNING? → Over 30% of the companies said they ask female applicants when or whether they plan a family--no doubt hoping to cut their turnover losses and to minimize their future maternity leave problems. Some companies said they only discussed this problem when "career-type" positions were involved. Since this was a matter frequently left to the discretion of hiring interviewers and supervisors, it's likely that many personnel executives actually don't know the extent of this particular form of employment screening. Some women reportedly have been asked not only when or whether they plan to have children, but what form of birth control method (if any) they are currently using. Many women, understandably, have found this an objectionable invasion of their privacy--and it would appear that the new guidelines would make this type of pre-employment questioning unlawful in most cases. (*Note:* It's not just applicants: the family planning question frequently comes up when women are considered for training programs or for promotion to more responsible and higher paying jobs within the same company.)

But many policies are being reviewed, revised. Over half the survey respondents are contemplating making changes in their maternity leave policies, or at least are reviewing their policies. In two out of three cases, this is being done to conform company policies to EEOC guidelines.

What kinds of changes? In order of frequency cited, these companies will be liberalizing present policies; or they'll be equalizing present inequities (for example, apply policies across-the-board that formerly were applied to certain categories of employees); a few companies (particularly plants and some of the hospitals) said they planned to publicize policies that were not generally known. A few unionized firms say they'll need to incorporate the new policies in their union agreement.

Liberalizing maternity leave policies is expected to cost companies money--and have other effects. How do companies think they'll be affected by changing their present maternity leave policies? Nearly two out of three respondents cited one or more problems that they felt would result; half this group cited two or more problems. In order of frequency cited, these are the most serious:

- Will cost the company more money.
- Will create problems for supervisors.
- Will boost absenteeism.
- Will create recordkeeping problems (keeping track of seniority, reinstatement rights, etc.).
- Fear claims for injuries.
- More work for medical department.

☞ WORKMEN'S COMPENSATION CLAIMS MAY NOT BE A PROBLEM → Although 10% of respondents have expressed concern about pregnant employees' filing claims because of a miscarriage or other injury suffered in the course of employment, this fear may not have much basis in fact. Here's why: We asked

respondents whether such claims had ever come up, in their experience. And, if so, was their company held liable? Surprisingly, none of the 108 respondents said they knew of a single case!

Day care: few employers as yet have programs. Only 8% of respondents said they help working parents find day care facilities. While three of these employers (two of them hospitals) have company-connected day care centers, most of the other firms' "assistance" is limited to making referrals to independent baby sitters or community day care facilities.

Would they consider participation with other firms—or unions—in setting up such facilities? One-fourth of the companies said Yes. One retail organization, for example, said they'd investigated the matter but would be interested only if costs could be reduced below present levels. A New England office firm said facilities up to now had only been available to them through the auspices of NAB-JOBS programs. And a manufacturing plant, located just outside the fringe of a large metropolitan area, said there simply weren't any facilities in their community—working parents had to manage as best they could.

☞ INTERESTED? → For more details on employer-sponsored child care centers, see NEW IDEAS ¶216.

How long a leave do they need? How long do maternity leaves extend *after* childbirth? More than half the responding companies set some sort of limit. Either they set the earliest and the latest time after childbirth that the employee can or must return to work (or lose her right to reinstatement). Or, they spell out a limit on the *total* length of a maternity leave (including before and after childbirth). Some firms set a variety of limits, as explained below. Just over one-fifth of the companies—22%—let the employee decide how soon she wishes to return to work after childbirth.

▷ *Earliest returns:* Of the companies setting a limit on when employees may resume work following childbirth, the most common requirement is 4 weeks or, more usually, 6 weeks after childbirth. (Note: A number of states formerly had rules prohibiting employment of women within 4-6 weeks after childbirth; a number of these laws, along with much other protective legislation tending to conflict with Title VII, have since been repealed. Check your state law on this point.)

▷ *Latest returns:* About half the companies setting limits say employees should return to work no later than 3 months after childbirth, or at least report in at that time to arrange for an extension of their leave, if desired. A few set the limit at 2 months, 6 weeks or 30 days. Others set the limit at 9 months or 1 year following childbirth.

▷ *Total leave length:* Of the companies setting limits on *total* length of maternity leave (just over two-fifths of the companies do) the majority say 6 months. About 5% of respondents provide for a one-year total leave, while another 5% provide for a 3-month total leave time.

☞ WHAT'S REASONABLE? → Up to now, no one knows for certain. While the EEOC guidelines say that if an employee's in effect forced to quit because the leave is insufficient (or if no leave is available), this violates Title VII ... "if it has

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P.S. CHECKLIST: HOW TO REVIEW YOUR MATERNITY LEAVE POLICIES

Survey findings suggest that many companies' present policies would not conform to EEOC guidelines [see box on page 458]. The following checklist will help you assess your own company's policies and identify problem areas that may need revision or further consideration.

	Yes	No
1. Do you grant maternity leaves to all employees who request one? (You can't require pregnant employees to resign.)	☐	☐
2. Can employees work as long as they are willing and able - with the *woman* (with her doctor's consent) deciding when she should begin her leave? (The *company* can't determine a cut-off date for *all* pregnant women because of presumed safety and health needs, supposed preferences of customers or other persons, or for other reasons - unless there's a demonstrable business necessity.)	☐	☐
3. Do you hire, train and make other personnel decisions without regard to an applicant's or employee's marital status, and without discriminating against an employee because she is (or might become) pregnant? (Inquiries about marital status, whether pregnant, family planning matters and child care arrangements would probably be considered discriminatory.)	☐	☐
4. Do you provide time off for maternity leave on the same basis as for other employees' "temporary disabilities"?	☐	☐
5. Is the pregnant employee entitled to company benefits, the same as other employees? (Does she get paid absences, even while pregnant? Accrued vacation time? Insurance benefits equivalent to those available for the wives of male employees? Etc.)	☐	☐
6. Are pregnant employees' seniority and reinstatement rights (to the same or equivalent job) protected during maternity leave? (Company can't refuse to reinstate employee - unless there's a business necessity.)	☐	☐

a disparate effect on employees of one sex and is not justified by business necessity." From many companies' standpoint, the prospect of generally liberalized maternity leaves will create some dislocation. And no doubt the problems of personnel forecasting are greatly simplified by having cut-and-dried rules restricting leaves to brief periods. Can this be justified by "business necessity"? While the question is still up in the air, many experts suspect *flexibility* will be the order of the day: as long as some women want to work up to the date of delivery and want to return to work the moment they're physically able (while other women want to take off anywhere from 6 months to a year) the employer will very likely be expected to accommodate to these varying individual needs.

Do they really want to come back to work? Personnel execs in firms that have had limited experience with maternity leaves up to now may be wondering: Why all the fuss? Don't women plan to stop working and stay home with their kids? Some, of course, do. And these women will, in most instances, simply resign their jobs and leave the labor market, at least for a few years.

But many others want or need to go on working. And the new guidelines assure these women that they won't forfeit the right to their jobs.

☞ MOST OF THE WOMEN WHO TAKE MATERNITY LEAVES COME BACK TO WORK → We asked survey respondents to tell us what proportion of their employees who were pregnant in 1971 quit their jobs and what proportion took a leave. Considering just those companies that had statistics available, half the plants, one-third of the office firms, and two-thirds of the hospitals said that 75% or more of the employees who were pregnant elected to take a leave. (In many of these cases, 100% of the employees took a leave.) And of this group, more than half reported a perfect score on "returns"—that is, all the employees who elected a leave actually returned to work as scheduled. On the other hand, some companies reported that only a fraction of employees actually returned after their babies were born (in some cases, they would have liked to return, if a suitable job opening existed).

Whether your company's experience is worse or better—depending on your point of view—you will surely have to reckon with maternity leaves from now on. And you'll have to consider ways to minimize the impact on your staff operations.

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NATIONAL CONFERENCE OF CATHOLIC BISHOPS
BISHOPS' COMMITTEE FOR PRO-LIFE ACTIVITIES
1312 MASSACHUSETTS AVENUE, N.W. • WASHINGTON, D.C. 20005 • 202/659-6673

July 12, 1977

Honorable Augustus F. Hawkins
Chairman, Subcommittee on
Employment Opportunities
B346A Rayburn House Office Building
Washington, DC 20515

Dear Mr. Hawkins:

I am writing on behalf of the United States Catholic Conference to provide supplemental information to my earlier letter of April 19, 1977 concerning the proposed amendment to the U.S. Civil Rights Act providing disability benefits to pregnant women.

In our April 19, 1977 letter, we stated our support for disability benefits for childbirth, while expressing our concern that the proposed amendment might be interpreted to require employers, including the Church, to provide abortion disability and medical benefits also. This would force the Church to violate its own moral teaching, and would amount to an infringement of First Amendment protections of religious freedom. It would also force employers who are morally opposed to abortion to violate their own consciences. Consequently, we asked that a sentence be added to the proposed amendment stipulating that pregnancy disability benefits do not extend to abortion.

One of our original concerns was based on a point made in some lower court decisions that a woman was entitled under the Equal Protection Clause to the same benefits for abortion as would be available for childbirth. But in Maher v. Roe the U.S. Supreme Court overruled that argument when it held that the Equal Protection Clause does not require a State to pay for abortion simply because it has made a policy choice to pay expenses incident to childbirth.

Although the Supreme Court rulings in Maher v. Roe and Beal v. Doe have clarified many of the constitutional questions, some uncertainty seems to remain as to the effects of the proposed amendment to the 1964 Civil Rights Act. We suggest that the proposed wording excluding abortion from coverage will clarify the matter effectively. Moreover, this exclusion is consistent with the recent decision of the U.S. Supreme Court (Maher v. Roe) holding that there is no constitutional mandate for the government to fund elective abortions. Noting that Roe v. Wade "did not declare an unqualified

'constitutional right to an abortion'", the Court went on to state that Roe v. Wade "implies no limitation on the authority of a State to make a value judgement favoring childbirth over abortion, and to implement that judgement by the allocation of public funds."

In Beal v. Doe, the Court further distinguished the state's interest in favoring childbirth over abortion. Referring again to Roe v. Wade, the Court held that "the State has a valid and important interest in encouraging childbirth. We expressly recognized in Roe the 'important and legitimate interest (of the State) in protecting the potentiality of human life.' That interest...is a significant state interest existing throughout the course of the woman's pregnancy. Respondents point to nothing in either the language or the legislative history of Title XIX that suggests that it is unreasonable for a participating State to further this unquestionably strong and legitimate interest in encouraging normal childbirth." Certainly what the Court has said of the states should apply equally to individual employers.

In light of Maher v. Roe and Beal v. Doe, we see the proposed amendment to Title VII as furthering the legitimate interest of the government to favor and facilitate childbirth by providing pregnancy disability benefits which is the primary objective of the proposed amendment. However, to dispel any confusion or misunderstanding regarding compulsion to provide abortion benefits, we seek the specific exclusion of abortion benefits.

Since our earlier letter, some confusion seems to have arisen concerning the proposed exclusion of abortion. It seems that the proposed exclusion of abortion benefits has been misrepresented as a total prohibition of abortion benefits, so that if the abortion exclusion is adopted, no employer would be able to provide disability benefits or medical coverage for abortion. This, however, is totally incorrect. If the abortion exclusion is adopted, any employer may provide abortion disability benefits, and there is nothing to prevent abortion benefits from being included in any health benefits package as a result of collective bargaining. The exclusion of abortion disability benefits simply avoids the possibility that an employer may be forced to provide such benefits under government compulsion. Given the various moral and ethical convictions concerning abortion, this seems most reasonable and most consistent with First Amendment protections.

Nor is this abortion exclusion discriminatory or preventive. The medical benefits package will be worked out by collective bargaining, applying to all women equally. Women who suffer complications from abortion will be able to obtain benefits under gynecological services, and there has never been, nor will there be anything to prevent their receiving such benefits.

Once again, all that the proposed exclusion does is remove any question of employers being compelled by government to provide abortion benefits, while leaving the entire issue to the collective bargaining process.

We ask that this letter be included as a supplemental statement to our earlier communciation and included in the record of the Subcommittee's deliberations.

Sincerely,

Msgr. James T. McHugh
Director

JTM:mek

California Chamber
of Commerce
455 Capitol Mall
P.O. Box 1736
Sacramento, CA
95808
(916) 444-6670

June 10, 1977 RECD

The Honorable Augustus F. Hawkins
House of Representatives
Washington, D.C. 20515

Dear Mr. Hawkins:

The California Chamber of Commerce opposes HR 6075 to require employer disability plans to cover childbirth and related medical conditions based on sex discrimination because:

1) Actuarial studies in states with mandatory pregnancy disability coverage show cost increases in disability insurance rates when maternity/pregnancy is covered. This will undoubtedly result in higher prices for products and services.

2) Studies show about half who leave work due to pregnancy do not return, resulting in an unusual form of severance pay not available to males or to females without children...itself a form of discrimination.

3) Employers and carriers would incur administrative burdens from repeated examinations to determine ability to work and duration of absence. Most doctors are trained to observe medical conditions, not work capabilities.

4) Plans covering pregnancy, usually in collective bargaining agreements, limit duration because of innate difficulty in determining pregnancy duration. These bills do not limit duration as do States with mandatory coverage. California's law, effective January 1, 1977, limits benefits to three weeks before and three weeks after normal delivery. 1977 first quarter statistics show payment of pregnancy benefits averages four weeks.

5) Payment of disability benefits for pregnancy is an unreasonable extension of any health and accident insurance program. Interpreting pregnancy as a disability is far fetched.

6) Less than half of employers nationally have disability plans. This legislation could discourage additional employers from creating this employee benefit.

7) That this bill is an amendment to the discrimination section of the Civil Rights Act is an improper document to handle any problem of disability.

The California Chamber urges that HR 6075 be held in committee.

Sincerely,

John T. Hay
Executive Vice President

JTH/e-

SANDERS PLUMBING CO.
3236 MULFORD AVENUE — P. O. BOX 369
LYNWOOD, CALIFORNIA

15 July 1977

Honorable Augustus Hawkins
House of Representtatives
Washington, D. C. 20515

Dear Congressman Hawkins:

When, oh when, are our legislators going to come to the full realization that we do not want to develop into a welfare state?

HR-6075 WOULD BE ANOTHER MILE, ANOTHER LONG MILE, ON THAT ROAD!

And this is discriminatory for it gives financial assistance to the working mother while it does nothing for the mother who devotes all of her time to the rearing of her children as my mother did and as my wife did.

Oh, I know that compassion is probably the reason for you do much more for government employees than private industry could even dream about, principally because government does not have to earn, only take. Even you, Senator Cusanovich told me, draw over $10,000 a year from our state for time you spent in the Assembly. And he said it was wrong but, I presume, it is the system.

But this is the private sector where every dollar that is paid out has to be earned - where there is no welfare (government version) as such for employees because production goals have to be met in order to furnish the product at a profit so that the business can continue.

Thank you for listening.

Sincerely,

Ralph A. Herbold

RECEIVED
JUL 20 1977

Cummins Engine Company, Inc.
Columbus, Indiana
47201

June 27, 1977

Subcommittee on Employment Opportunities
U. S. House of Representatives
Room B 346A Rayburn Building
Washington, D.C. 20515

Attention: Carole Schanzer

Dear Ms. Schanzer:

I am enclosing the information Cummins provided to Senator Birch Bayh, in connection with his Senate testimony on S. 995, the pregnancy disability legislation. It describes how pregnancy-related disabilities are handled under Cummins' employee disability programs.

I hope the subcommittee finds this useful.

Sincerely yours,

J.C.Smith/dm

Manager - Government and Community Relations

Attachment

Cummins Engine Company has a short term disability payments program for each of its three groups of Columbus based employees. The administration of the plans is similar in that an employee must be under the care of a licensed physician and must furnish a statement from the physician certifying the disability, giving a diagnosis and the expected duration of said disability before the employee is eligible to receive the disability pay.

Our Company defines childbirth or the complications of pregnancy as a temporary medical disability which will be covered by our benefits program the same as a disability arising from any illness or accident. Information gathered from our medical staff and doctors in this area indicates the length of disability for normal childbirth should be approximately 6 to 8 weeks and can best be determined by the employee in consultation with her family physician. It normally spans the time from approximately 2 weeks before to 4-6 weeks after delivery.

A disability arising from a complication of pregnancy must be diagnosed and a statement of disability filed by a licensed physician for the employee to qualify for Weekly Disability payments. This is the same procedure followed for all other medical disability claims.

The shop hourly employees are paid $100 weekly when they are unable to work because of an accident or illness. During 1976 this group consisted of 5,428 employees, of which 235 were women, and a total of $4,780.00 was paid in weekly disability payments to five female employees for maternity related disabilities. Two (2) of these disabilities involved complications and extended for 10 and 20 weeks respectively while the remaining 3 disabilities were for a period of 6 weeks.

The office hourly employees are paid $102 weekly when they are unable to work because of an accident or illness. During 1976 this group consisted of 1,571 employees, of which 733 were women, and a total of $31,259 was paid in weekly disability payments to 41 female employees for maternity related disabilities. Eight of these disabilities involved complications and extended for periods ranging from 9 to 30 weeks while the remaining 33 disabilities fell within the normal 6 to 8 weeks referred to earlier.

The salaried employees are paid their full salary for the first 3 months of a disability and 75% of salary for the next 3 months. During 1976 this group consisted of 2,124 employees, of which 100 were women, and a total of $22,400 was paid in disability payments to 7 female employees for maternity related disabilities. Two (2) of these disabilities involved complications and extended for 8 months and 3½ months while the remaining 5 disabilities fell within the normal 6 to 8 week period.

It should be noted that a personal leave not involving disability may be requested by an employee during the term of the pregnancy and/or for 6 months following the birth of the child. This leave will be granted without pay but the employee's seniority continues to accumulate.

The total benefits paid to hourly employees for maternity related disabilities in 1976 was $36,039 compared to a total of $1,300,000 in disability payments for all hourly employees. A contributing factor in controlling the maternity related disability costs has been a clause in both labor agreements covering hourly employees which allows them to return to the same job they left if the disability is for a period of 10 weeks or less.

A normal pregnancy is not, in or of itself, a disabling condition. However, the time immediately prior to, during and immediately following childbirth can readily be accepted as a time of temporary disability. In addition, several recognized medical complications during pregnancy can cause a temporary disabling condition for varying lengths of time.

95-249 O - 77 - 12

Resume of:

Murray W. Latimer
M. B. A. Harvard Business School - 1924

1926-33	Pension and insurance specialist, Industrial Relations Counselors, Inc., New York, New York
1933-34	Pension and insurance consultant, Federal Coordinator of Transportation, Washington, D. C.
1934-46	Chairman, U. S. Railroad Retirement Board
1934-35	Member, Technical Board, Cabinet Committee on Economic Security
1934-35	Chairman, Committee on old-age security of Technical Board (In charge of preparation of Social Security Act)
1935-36	Director, Bureau of old-age benefits, Social Security Board
1946-47	Research Director, President's Guaranteed Wage Study
1967 to date	Independent consultant
1970-71	Member Actuarial Panel, Social Security Advisory Committee
1977	Member, Panel on Contingent Employer Liability Insurance, Advisory Committee to the Pension Benefit Guaranty Corporation

Author:	Industrial Pension Systems in the U. S. and Canada (2 volumes) Trade Union Pension Systems in the U. S. and Canada Relation of Pension Costs to Maximum Hiring Ages (for U. S. Bureau of Labor Statistics) Recent Trends in Industrial Pensions (with K. R. Tufel) Guaranteed Wages (with J. J. Senturia and others) Guaranteed Wages for Steel Employees Hospital Costs for Retired Employees Disability Pensions Under the New York State Employees' Retirement System
Fellow:	Casualty Actuarial Society Conference of Actuaries in Public Practice Canadian Institute of Actuaries
Member:	American Academy of Actuaries International Actuarial Association

JOHN J. RHODES
1st District, Arizona

Congress of the United States
House of Representatives
Washington, D.C. 20515

ADMINISTRATIVE ASSISTANT
ALMA A. ALDRIDGE
LEGISLATIVE ASSISTANT
JAMES R. PELTHAM
DISTRICT OFFICES:
Old Federal Building
Phoenix, Arizona 85003
ROBERT J. DEARLAN
Suite C-29
1001 Jon Tully Law
Tempe, Arizona 85281
JAMES P. SYMINGTON

July 5, 1977

Dear Mr. Chairman:

In the absence of Congressman Rhodes, I am forwarding testimony by Dr. Eldon Nygaard, Arizona State University, Tempe, Arizona, to be included in the record of hearings on H. R. 6075.

Yours sincerely,

Peter M. Hayes
Legislative Assistant

The Honorable Augustus F. Hawkins
Chairman
Subcommittee on Employment Opportunities
Committee on Education and Labor
House of Representatives
B346A Rayburn HOB

PMH/rmd
Enclosure

June 27, 1977

John J. Rhodes
Congress of the United States
House of Representatives
Washington, D.C. 20515

Dear Congressman Rhodes:

Thank you very much for your prompt response to my letter. I welcome this opportunity to have my testimony included in the Hearings Record concerning H.R. 6075. It involves a highly controversial subject and therefore demands a complete presentation of all sides to the issue. I advocate rejection of the proposed Bill to amend Title VII of the Civil Rights Act of 1964 (H.R. 6075) for the following reasons:

Honorable Members of the Employment Opportunity Subcommittee of the Education and Labor Committee of the House of Representatives:

I am Professor Aldon E. Nygaard of the 1st Congressional District of Arizona. I hereby respectfully submit the following testimony on the consideration of H.R. 6075.

People living in organized societies have developed advanced needs and desires and with them specialized skills in fulfilling them. The least skilled person has infinitely more ability than the best trained beast of burden and the most sophisticated machine. Lower animals and machines are moved about in our economy as needed or at least as purchased. But matching up men and their skills with the work to be performed is another matter entirely. For more than a century for all men, and for many centuries for white men, we have had a legal system of freedom of contract, of freedom of choice, in arranging for the

distribution of employment in our economy. Every society must have a system to accomplish this; it could be done by a governmental agency requiring forced labor, that is a universal system of conscription for all employment, or by a system of slavery or peonage where one favored group would have the legal right to compel men to perform services for them, (we recently ended a system of forced conscription for military service), or we could let people seek their own employment--such positions, from such employers, in such locations as they choose or as their skills permit for such compensation, for such hours and conditions of employment as might be agreed upon by them and their employers. We have chosen the latter system although we have yet to make it available to all men and women.

An employment system which is based upon freedom of contract as a matter of law, at least, allows employees to choose their employers and allows employers to a large extent to choose their employees. The limitations on these choices are a part of the purpose of Title VII of the Civil Rights Act of 1964.

The proposed amendment to Title VII should be analyzed not only in terms of the present but also in terms of the future. The percentage of the civilian labor force that is female shows a projected increase through 1990.[1] While the labor force participation rate for males shows a projected decrease, the labor force participation rate for females shows a projected increase from 43.0% in 1970 to 51.4% in 1990. Thus, the percentage of all women who will work will increase by almost 20% of its present level.

1
SOURCE: The 1970 and 1975 population are estimated from Current Population Reports, Series P-25, No. 614. Labor Force data for 1970 are from Special Labor Force Report 156. The 1975 labor force data are from Current Population Survey estimates. Population projections are from Current Population Reports, Series P-25, No. 601. See Chart in Appendix.

The percentage of the total civilian labor force that will be made up of child-bearing age females (between the ages of 16 and 44) shows a projected increase from 23.9% in 1970 to 30.8% in 1990.

The percentage of the female portion of the civilian labor force that will be between the ages of 16 and 44 will increase from 62.8% in 1970 to 72.1% in 1990.

Within the next 20 years, the percentage of the labor force that is made up of child-bearing age females will increase greatly. It is plain to see that the cost of implementing the proposed change in the law would be high. It is also clear that this cost is not absorbed by business for long before it is passed on to the consumer by way of increased cost of goods and services. I can not over emphasize the possible inflationary effects of the passage of the proposed bill.

I believe the United States Supreme Court has done an excellent job in dealing with the maternity issue. For example, the Court in Cleveland Board of Education v. LaFleur[2] held mandatory leave provisions violative of equal protection.[3] Employment termination based on inaccurate, irrebuttable presumptions of physical inability to work were found to be irrational in relation to the asserted purpose of achieving continuity in classroom instruction. The decision of when, or even if, a pregnant woman leaves work is left to the woman herself to decide; she has the freedom of choice.

[2] Cleveland Board of Education v. LaFleur, 414 U.S. 632 (1974).

[3] Id. at 651.

Once again in 1974 the Supreme Court met the issue of pregnancy. In the Gelduldig case,[4] female employees brought a constitutional challange to California's state-administered disability insurance fund that refused to pay women who became continuously disabled as a result of normal pregnancy. The Court held California's exclusion of pregnancy as a compensable disability was objective and wholly non-invidious. The Court said,

> "The program divides potential recipients into two groups--pregnant and non-pregnant persons. While the first group is exclusively female, the second includes members of both sexes. The fiscal and actuarial benefits of the program thus accrue to members of both sexes."[5]

Title VII of the Civil Rights Act of 1964 was enacted to provide protection from discrimination in the compensation, terms, conditions, or privileges of employment.[6] It was created in a period of increasing sensitivity to women's rights.[7] Employee non-occupational health and disability insurance plans commonly exclude pregnancy as a compensable disability while providing coverage for other temporary disabling conditions. Private plaintiffs have challenged such plans as sex discrimination prohibited by Title VII. The Supreme Court in Gilbert[8] held it was not. The Court reasoned if General Electric had chosen to furnish no benefits plan, plaintiffs could not challenge this as discriminatory merely because the "underinclusion" of pregnancy would impact only upon women.[9]

[4] Gelduldig v. Aiello, 417 U.S. 484 (1974)

[5] Id. at 496 n. 20 states in part. . .

[6] See 42 U.S.C. § 2000e-2 (Supp. II 1972)

[7] One year prior to the passage of the Civil Rights Act of 1964, Congress established a principle of equal pay for equal work with the passage of the Equal Pay Act. 29 U.S.C. 206 (d) (1964)

[8] General Elec. Co. v. Gilbert, 97 S. Ct. 401 (1976)

[9] Id. at 410.

The 1964 Civil Rights Act was a monumental accomplishment on the part of Congress. It has worked and will go on working. The Court has interpreted the Constitution and Title VII consistent with the purpose of ending discrimination. I do not believe it is the time for Congress to reverse the work of the Court or add to the purpose of the original Act.

The passage of H.R. Bill 6075 would create a situation whereby the employers of this country would incur an added financial burden in the area of medical insurance costs which would be passed on to the consumers and buyers of their products, goods and services, adversely affecting an already inflationary economy. Those companies unable to pass these added costs through to their consumers due to competitive pressures or for other reasons, would probably be forced out of business, creating additional unemployment and greater expense to government and industry for unemployment insurance costs.

As you know, company medical and other employee benefit costs have increased steadily to the point where they currently amount on the average to 35% of industry's labor costs; i.e., 35¢ of every payroll dollar. In addition, the problem of rising health care costs is well known to the Congress, the President and especially to the average American family. In 1976 the costs of doctors, hospitals, dentists, prescription drugs, and other aspects of health care exceeded $130 billion dollars. This means that Americans, on the average, are now spending an alarming $600 annually per person, or about $2,300 per family for health care. The average family spends between 9 to 10% of their average income for health care. Overall costs of health care in 1976 were about 14% higher than 1975. Costs of hospital care alone have increased almost 17%. With the steadily increasing numbers of females of child-bearing age in the work force, (currently at 25.5 million, and projected to 35 million by the year 1990) the potential of increased cost if this bill were to become

law, would be nothing short of catastrophic. Females of child-bearing age currently account for 27% of the total U.S. work force; and are projected to account for approximately 31% of the work force by the year 1990.

It is also my feeling that if the bill in question were to pass, it could be convincingly argued that the spouses of male employees should also be afforded the same medical insurance coverage and protection for pregnancies and maternity as female employees would then receive, thereby creating an even heavier financial burden on the employer and ultimately the consumer.

The bottom line of the effect of enacting H.R. 6075 would be to pass a portion of the cost of child-bearing onto the consumer by way of increased cost of goods and services. Traditionally the individual family has borne the cost of their decision to bring a life into this world. A female employee could potentially collect disability payments for five, six, or even more months if a doctor would agree that she should not go to work. I believe the law should stay as it is and H.R. 6075 should not be passed. I have discussed this with many people both male and female and without exception they agree with the aforementioned point of view.

In summary, for the reasons stated above, I very strongly feel that the passage of this proposed legislation would have a severe adverse economic impact, literally on the American economy as a whole.

Respectfully,

Eldon Nygaard, Professor
Arizona State University

EN/ej
Attachment

APPENDIX

	1970	1975	1980	1985	1990
% of Civilian Labor Force that is Female ($\geq$ 16 years)	38.0	40.0	41.0	42.0	43.0
Labor Force Participation Rates Male ($\geq$ 16)	79.3	77.8	77.8	77.5	77.3
Labor Force Participation Rates Female ($\geq$ 16)	43.0	46.3	48.4	50.3	51.4
% of Total Labor Force that is Female & between 16 & 44 (Pregnancy-Prone Population)	23.9	27.0	28.8	30.4	30.8
% of Female Civilian Labor Force that is between 16 & 44	62.8	67.7	70.4	72.3	72.1

AMERICAN VETERANS COMMITTEE,
Washington, D.C., May 2, 1977.

Chairman AUGUSTUS F. HAWKINS,
House Employment Opportunities Subcommittee, Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: At its quarterly meeting on April 30, the National Board of the American Veterans Committee, Inc. (AVC) voted to send the following statement to your Subcommittee concerning HR 5055 now pending before the Subcommittee. AVC is a veterans organization composed of men and women who served in the military forces of the United States in World Wars I and II, and in the Korean and Vietnam Wars.

First, AVC fully supports HR 5055 which would amend Title VII of the Civil Rights Act of 1964 to make clear that its prohibition against sex discrimination in employment also prohibits any employer from refusing to provide to a woman worker, solely because of her pregnancy or any conditions relating thereto, any disability benefit otherwise available to other workers who are disabled by other causes. We believe that the Supreme Court's decision of December 7, 1976 in *General Electric* v. *Gilbert*, which interpreted Title VII otherwise, misconstrued the Congressional intent and thereby seriously undermined the statutory prohibition against sex discrimination in employment. Discrimination aganist women workers on the basis of pregnancy has been, and is, the keystone of the entire structure of discriminatory treatment widely imposed on women workers and their families. So long as there is such discrimination, women workers will never have equality of opportunity in employment.

Hence, we urge that HR 5055 be promptly enacted to reverse the *General Electric* decision.

Second, for the following reasons, AVC supports, if it is revised as indicated below, the proposal that your Subcommittee amend this bill by adding section 2 of HR 6075 (whose first section is identical to HR 5055). That section 2 would prohibit an employer from reducing benefits under existing fringe benefits plans "in order to comply with" the requirements that HR 5055 would enact. That section 2, if adopted, would be in conformity with similar statutory command in the Equal Pay Act of 1963 (Public Law 88-38, 77 Stat. 56, 29 U.S. Code 206(d)(1)). It would also embody the view of many judicial decisions that discrimination should be eliminated by granting those discriminated against the same benefits that are granted to others, rather than be taking away benefits from those who previously received them. Enactment of HR 5055 would probably not result in substantial likelihood of such reductions in existing fringe benefits plans, partly because of that judicial attitude, and partly because any reduction would imperil the Company's financial interests in its labor relations much more than the Company would benefit through any savings from such reduction in fringe benefits. Nevertheless, to allay the fears expressed by some persons that such reduction might occur, and to avoid the possible need to litigate the validity of any such reduction, we support adoption of section 2, if it is revised and explained as stated below.

1. There are two technical defects in section 2 of HR 6075. To correct them we recommend the following amendment, which is shown in ink on page 2 of the attached photocopy of HR 6075, and which is as follows: "The phrase 'section 2000e of title 42, United States Code, and the following' appears twice in section 2. Both phrases should be deleted, and the following phrase substituted in their stead in each place: 'subsection (k) of section 701 of the Civil Rights Act of 1964.'"

Our reasons for this recommendation are as follows:

(a) The reference to "section 2000e of title 42, United States Code, and the following" incorporates all the provisions of Title VII. Thus, section 2 would apply not only to the pregnancy-disability issue but also to all other kinds of employment fringe benefits subject to Title VII, including vacations, retirement, pensions, recreation programs, etc., etc. The Coalition to End Discrimination Against Pregnant Workers, which drafted and approved the language of HR 5055, specifically decided, after extensive discussions, that the bill should deal only with the pregnancy-disability issue and should not be encumbered with other controversial issues, including other discrimination matters. Although we support the total elimination of sex discrimination in all aspects of employment, including discrimination in fringe benefits programs, we concur with the Coalition that this

bill should deal only with the pregnancy disability issue. Thus, the bill would avoid potential controversies concerning the other areas which may endanger the bill when it comes to the House and Senate floors.

The new language we recommend (". . . subsection (k) of Title VII of the Civil Rights Act of 1964 . . .") would refer, to an incorporate, the legislative requirement in the bill that ". . . women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work. . . ."

(b) The reference to "section 2000e of title 42, United States Code and the following" is imprecise drafting, because the United States Code is not law, but simply codification which is only prima facie law. The reference should be to the law itself, i.e., the appropriate section of Title VII of the Civil Rights Act of 1964 which Congress enacted.

2. Some opponents of HR 5055 charged that section 2 would freeze existing fringe benefits programs and thus (a) would prevent future changes in those programs to meet changing circumstances unrelated to any discriminatory motive or effect, and (b) would adversely affect competitive relationships between those employers whose existing plans are thus frozen and those employers who are not subject to a frozen fringe benefits plan. We do not read section 2 as having such effects. Section 2 would simply prevent reduction of benefits solely to comply with the equalization, i.e., nondiscrimination, that HR 5055 would require. When nondiscrimination is attained, the employer would be able, either when modifying or renewing a collective bargaining agreement, or changing insurance plans, or otherwise, to have the fringe benefits plan modified for any valid nondiscriminatory reason, such as to achieve over-all equitable cost allocation, change insurers, modify benefits or costs, etc.—so long as the purpose of the change is not to reduce benefits solely to comply with the nondiscrimination requirement of HR 5055 will enact. To avoid the possibility of misapprehension on this matter, we recommend that the Committee Report specifically set forth that this is the Congressional understanding of Section 2.

For these reasons, we urge as follows:

(1) that you report HR 5055 promptly;

(2) that if you include section 2 of HR 6075, you should (i) modify the section as indicated in paragraph 1 above; and (ii) clearly state in the Committee report that your Committee's understanding of section 2 is as indicated in paragraph 2 above.

We request that this letter be included in the Record of the Hearings.

Sincerely,

JUNE A. WILLENZ,
Executive Director.
PHINEAS INDRITZ,
National Counsel.

95TH CONGRESS
1ST SESSION

H. R. 6075

IN THE HOUSE OF REPRESENTATIVES

APRIL 5, 1977

Mr. HAWKINS (for himself, Mr. BONIOR, Mr. BRODHEAD, Mr. BRADEMAS, Mr. CARR, Mr. COHEN, Mr. CORNWELL, Mrs. FENWICK, Mr. FORD of Michigan, Mr. HEFTEL, Mr. KILDEE, Mr. MEEDS, Mr. MILLER of California, Mr. NEAL, Mr. NEDZI, Mr. NOLAN, Mr. RODINO, and Mr. TRAXLER) introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To amend title VII of the Civil Rights Act of 1964 to prohibit sex discrimination on the basis of pregnancy.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title VII of the Civil Rights Act of 1964 is amended as follows:

SECTION 1. Section 701 is amended by adding thereto a new subsection (k) as follows:

"(k) The terms 'because of sex' or 'on the basis of sex' include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions, and

women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 703(h) of this title shall be interpreted to permit otherwise.".

SEC. 2. The amendment made by this Act shall be effective upon the date of enactment: *Provided*, That an employer who, either directly or through contributions to a fringe benefit fund or insurance program, is providing benefits under a fringe benefit program which is in violation of ~~section 2000e of title 42, United States Code, and the following,~~ SUBSECTION (h) OF SECTION 701 OF THE CIVIL RIGHTS ACT OF 1964, as amended by this Act, shall not, either directly or by failing to contribute adequately to the fringe benefit fund or insurance program, reduce the benefits or the compensation provided to any employee in order to comply with ~~the provisions of section 2000e of title 42, United States Code, and the following,~~ SUBSECTION (h) OF SECTION 701 OF THE CIVIL RIGHTS ACT OF 1964, as amended by this Act.

○